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Assault on Workers' Rights

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Assault on Workers' Rights

Abstract

The cases in this report describe employers' blatant contempt for the rights of workers to voice their opinions in the workplace. Obsessed with retaining unilateral and total authority over their employees, the owners of companies and their agents go to great lengths to crush efforts by workers to exercise their right to an independent voice.

Employers harass, intimidate, and threaten workers with reprisal so that they will abandon their quest for union representation. Those who emerge as leaders of these attempts at self-organization and those who openly question terms and conditions of employment are singled out for ridicule, assigned onerous tasks, disciplined, and often fired.

While management wages a frontal attack on workers, company lawyers manipulate the legal process to delay, frustrate and defeat the campaign for independent representation. As a result, the right to an independent voice for workers has become a mirage.

Keywords

unions, labor movement, organizing, anti-unionism, representation, AFL-CIO

Comments

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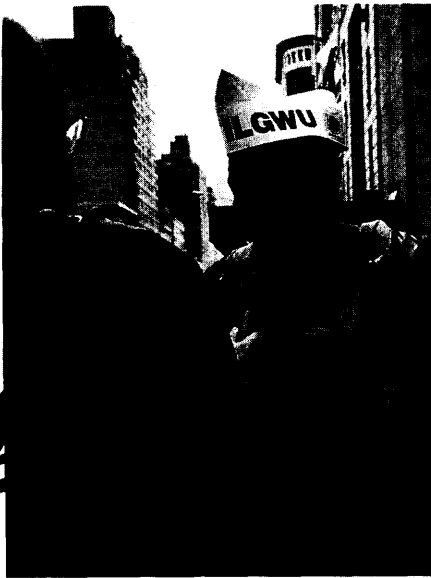
ASSAULT ON Workers' Rights

Case studies were prepared for publication and factual
information was verified and documented by

RICHARD W. HURD

Professor and Director of Labor Studies
New York State School of Industrial and Labor Relations
Cornell University

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FORM NLRB-4727
(9-69)



NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
AN AGENCY OF THE UNITED STATES GOVERNMENT



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"They said I was the
only one complaining;
when I organized a
group, they said they
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The cases in this report describe employers' blatant contempt for the rights of workers to voice their opinions in the workplace. Obsessed with retaining unilateral and total authority over their employees, the owners of companies and their agents go to great lengths to crush efforts by workers to exercise their right to an independent voice.

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While management wages a frontal attack on workers, company lawyers manipulate the legal process to delay, frustrate and defeat the campaign for independent representation. As a result, the right to an independent voice for workers has become a mirage.

These cases highlight deficiencies in current labor law. For a more technical review of the current status of labor law and industrial democracy in the United States see, *Workplace Rights: Democracy on the Job*, a companion document prepared by the Industrial Union Department *ad hoc* Committee on Organizing and Labor Law Reform.

INTRODUCTION

President Franklin Roosevelt signed the National Labor Relations Act in 1935 and gave hope to millions of American workers that their rights on the job were permanently ensured. The National Labor Relations Act (section 7) promised that the federal government would protect “the right of self-organization, to form, join, or assist labor organizations, to bargain collectively...and to engage in other concerted activities for the purpose...of mutual aid or protection.” Unfortunately, our industrial relations and legal systems no longer deliver on that promise. Amendments to the National Labor Relations Act in 1947 and 1959 placed limits on organizing rights and granted employers extraordinary opportunities to undermine workers’ attempts to secure independent representation. Particularly important was a provision of the 1947 Taft-Hartley amendments that facilitated attacks on workers’ organizations under the guise of “employer free speech.” Nearly fifty years of rulings since then by the National Labor Relations Board (NLRB) and the federal courts have expanded employers’ rights to oppose unionizing and narrowed protections for workers who seek to exercise their rights.

In recent years employers have become particularly aggressive in their response to workers’ attempts to form unions. The antiunion fervor has been nurtured by increasingly conservative judicial decisions and by twelve years of an employer-oriented NLRB during the Reagan and Bush administrations. Today in the employer community there is a widespread disregard for the legal right of workers to self-organization. Moreover, under current rules, employers are able to abuse the National Labor Relations Act because it sets few limits on their behavior. Even where there are legal restrictions on specific actions or tactics, the penalties for violations are so meager that they have little deterrent effect. *If an employer is determined to oppose unionization, it is virtually impossible for workers to achieve collective bargaining protections through the NLRB process.*

When the National Labor Relations Act was passed, it was viewed as a guarantee that workers who wished to organize would be protected from hostile employers. As the system it created now functions, however, the law has become a tool of antiunionism. Where workers encounter strong resistance, it is often the best option to bypass the NLRB and use persuasive tactics, including corporate campaigns and community coalitions, to secure bargaining rights. The NLRB offers workers an effective route to self-

organization only when employers choose to comply voluntarily. This perverse situation is a clear contradiction of the original intent of the law. It is outrageous that a nation committed to individual freedom would abandon its responsibility to protect the right of workers to assert freedom of association in the workplace.

Industrial Union Department Case Studies Project

In 1993, motivated largely by concerns for how best to respond to the challenges of the global economy, the Clinton administration created the Commission on the Future of Worker Management Relations. Chaired by John Dunlop, the commission is examining laws that govern the workplace, including the National Labor Relations Act. Although the Dunlop commission’s primary concern is to identify policy alternatives that would encourage improved productivity and labor-management cooperation, the attention of the Clinton administration to the legal framework that governs collective bargaining offers an opportunity for workers and their unions to point out inequities in the current system.

In that spirit, the Industrial Union Department (IUD) initiated a project to gather sample cases from affiliated unions that would highlight aspects of the National Labor Relations Act that deserve attention from those evaluating the current status of workplace rights. From June 1993 through May 1994 the IUD collected 255 case studies of workers’ efforts to organize. One hundred of the cases were edited and fully documented, then presented to the Dunlop commission.

Preparation of the cases for the Dunlop commission was an important objective of the IUD when this project was initiated, but there was another intention as well. Although workers who try to form unions and organizers who assist them are well aware of the gaping holes in the current legal system, many union members and other supporters of the rights of workers in a democratic society may not understand the depth of the problem. In this report we include an overview of the case studies, plus descriptions of twenty of the cases in enough detail to convey the trauma workers face when they seek to “form, join, or assist labor organizations.” We hope that as you read the cases you will come to share the concern we have about the injustice these workers experience and that you will work with us to restore workplace rights and return the National Labor Relations Act to its original intent. ■

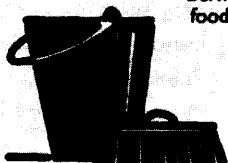
CASE STUDIES OVERVIEW

"I've Scrubbed These Floors for 16 Years..."

Bernice Dowd has worked in Housekeeping at Knox College for the last half of her working life. She'll be retiring in two years.



Bernice brings home \$147 a week - to buy food, to pay heat, to clothe herself and to keep a roof over her head. \$147 a week.



**We think that's wrong.
Don't You?**

... and I Can't Afford to Walk on Them."



Find out what you can do to help.
Call (217) 522-1182, collect.

Published by Labor 75 Service Workers International Union 401, 1975

Even colleges and universities suppress workers' rights. This flyer reflects the conditions faced by workers at Knox College in Illinois, where the employer responded to organizing with a textbook resistance campaign.

In virtually all of the organizing cases collected by the IUD, employers implemented broad-ranging campaigns to convince workers that their attempt to gain independent representation would be fruitless. The scenario is amazingly consistent across a wide range of industries and does not vary substantially with unit size or region of the country. Even those companies that have good relations with unionized employees at other facilities, and those with functioning employee involvement systems, bitterly oppose the organizing aspirations of their nonunion employees. This opposition routinely involves the use of a management lawyer or consultant who is expert at defeating workers' organizing efforts.

When workers file a petition for a union representation election, a common employer response is to appeal the unit determination or to file some other legal challenge in order to delay an election. The delay allows the company to initiate a multifaceted program, typically involving a combination of enticements and intimidation. Management promises improved conditions if the unionizing effort is defeated, hints at pay raises, and points out that no improvements are guaranteed if the self-organization effort succeeds. Top management writes letters about the dangers of unionizing, including the possibility of strikes during which the company may legally hire permanent replacements. The likelihood of a plant closing is often suggested. Workers are required to attend "captive audience meetings" during which management explains its opposition to independent worker organizations. Supervisors monitor the situation, gather intelligence on union plans and actions, and hold one-on-one meetings with workers to discuss the situation. The captive audience meetings and one-on-ones are sometimes supplemented by small group meetings, which exclude employees sympathetic to forming a union.

Although many employers find ways to run coercive and intimidating campaigns within the limits of the law, many others openly violate NLRB policies. The most common occurrence is discrimination against union supporters in job assignments, discipline, and, in many cases, discharge. The apparent rationale behind this most extreme form of destroying workers' efforts to organize is that the penalties for violating the law are modest in comparison to the employer's perception of the advantages of denying workers an independent voice.

If in spite of all of this the workers prevail in a representation election, the employer often will appeal certification to delay bargaining, in some cases for years. Even if the appeal fails and the union is certified as the bargaining agent, the company may refuse to bargain in good faith as part of a long-term strategy to decertify the union. The penalties against employers for bargaining in bad faith are as weak and ineffective as the penalties for violating the law during the organizing effort.

These and other issues are dealt with in more detail in the cases below. The picture that emerges is not pleasant. Employers display no respect for the rights of workers to engage in self-organization. Many attorneys have become expert at exploiting fine points in the law to delay elections and certification, to defeat workers' organizing campaigns, and to avoid reaching agreement with certified bargaining agents.

Union-Free Policies and the Suppression of Workers' Rights

Without independent representation provided by a union or other employee association, workers have few rights on the job. Although there are some limitations placed on employers by federal antidiscrimination legislation and by similar state laws, the prevailing principle in the United States is "employment at will." Under this principle, the employer has total authority to hire, fire, discipline, and assign workers. Furthermore, employers unilaterally determine terms and conditions of employment (including pay and benefits) and may unilaterally change those terms and conditions without prior notice.

Indeed, workers who raise questions as individuals about working conditions or pay and benefits may be fired without recourse. The individual worker's only right to protest employer policies and decisions is the right to quit. However, the National Labor Relations Act does establish rights for workers who join together with others to engage in "concerted action." Workers collectively can voice opinions about terms and conditions of employment. The Act protects any efforts at "self-organization," and it specifies a procedure for workers to determine by majority vote whether they wish to have "independent representation."

In their carefully crafted strategy to repress concerted action by employees, companies have deflected atten-

tion from their own authoritarian objectives by attacking unions. Thus they adopt union-free policies and wage campaigns against unions when their workers try to organize. This antiunionism is often referred to as union-busting by those who support an independent voice for workers. By whatever name, the campaign against the union focuses attention on the "third party" and allows employers to repress surreptitiously the rights of their employees. As you will see from the cases we describe, the way these antiunion companies treat their own employees who dare speak out for independent representation reveals the true target of their venom.

Employers oppose workers' efforts at self-organization in order to avoid being constrained by the workers' independent representative. Employers wish to protect their own unilateral authority over the workplace and to preserve employment at will. This is why they bitterly resist when workers assert their rights to self-organize and seek an independent voice.

Presentation of Cases for Labor Law Reform

Most of this report is devoted to the stories themselves. They are organized based on major theme, but there is a fair amount of overlap so that many of the cases easily could have been placed in two or three different sections. Each section starts with a description of the problems illustrated by the cases that follow. Section introductions also include descriptive inserts from other cases to highlight the issues at hand.

Cases in "Destroying Workers' Organizations" depict the union avoidance routine in a variety of settings. "Labor Law as a Tool for Employers" reports on cases that demonstrate how employers strategically use delays and loopholes in the law. The section on "Flagrant Violations of the Law" includes the most extreme examples of employers' disregard for workers' rights and the legal system. "Employee Involvement as Union Avoidance" describes participation and dispute resolution systems installed to frustrate workers' efforts to organize. The final section presents cases in which workers voted for union representation in an NLRB election only to be confronted by employer "Bargaining to Evade a First Contract."

In order to give enough detail to describe both the tactical and emotional essence of each case, we limited ourselves in this collection to 20 of the 255 cases we re-

WARNING REPORT

NAME: *Elkins, Teresa* ADDRESS: *Production*
 DATE: *7-28-92* TIME: *11:30 AM*
 DATE OF VIOLATION: *7-28-92*

NATURE OF VIOLATION:
☐ ABSENTEEISM ☐ DISSENT ☐ DISOBEDIENCE ☐ DISRESPECT
☐ INSUBORDINATION ☐ UNCOOPERATIVENESS ☐ OTHER: *Endangering relationship with client by participating in union activities*

EMPLOYEE'S SIGNATURE: *Teresa Elkins* DATE: *7-28-92*

APPROVED BY: *[Signature]* DATE: *7-28-92*

EMPLOYER'S SIGNATURE: *[Signature]* DATE: *7-28-92*

COPIES: ☐ EMPLOYEE ☐ SUPERVISOR

AARON TEMPORARY SERVICES, INC.

July 28, 1992

Ms. Teresa Elkins
 Route 3 Box 84
 Piggott, Ark. 72454

Dear Teresa:

This letter is to advise you of the termination of your employment with Aaron Temporary Services due to your endangering our relationship with our client, The Magee Company.

Sincerely,
[Signature]
 Gay Hartness
 Branch Manager

GH/lv

Aaron Temporary Services supplies many of the workers for Tandy Corporation's Magee Company factory in Piggott, Arkansas. When Teresa Elkins and her co-workers sought to form a union, Magee notified Aaron, which played the role of enforcer.

ceived. Naturally, this meant passing over some exceedingly important issues. For those who are interested in a more complete compilation, the 100-case document prepared for the Dunlop Commission is available from the Industrial Union Department. Before we move on to the stories, we should touch on a couple of the topics not addressed directly below.

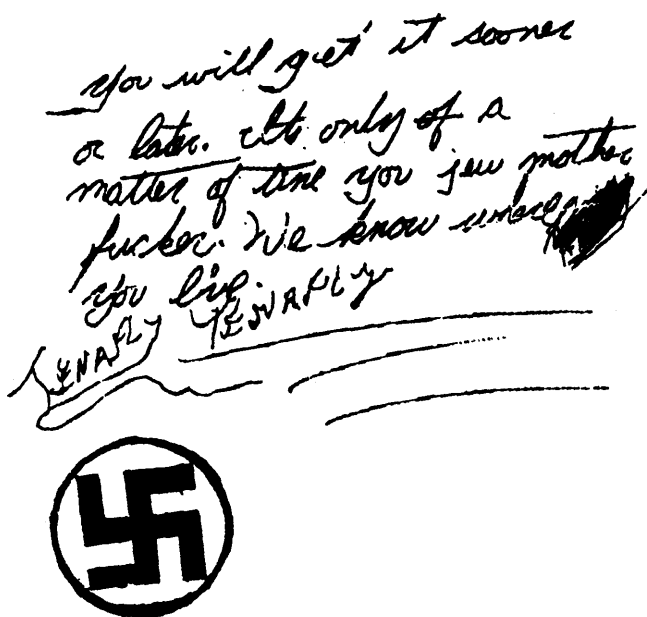
We received many cases that dealt with workers who are not covered by the NLRB. Most frustrating are those in which workers are employed by nonprofit agencies that rely on government funding. The NLRB has refused jurisdiction because of the government funding, yet state public employee boards have refused jurisdiction because the workers are not employed directly by a state or local government agency. These workers find themselves in legal limbo where self-organization becomes bogged down in endless litigation.

We also collected many cases that concerned the problems contingent workers face. The barriers to self-organization described in this manual are magnified for employees of contractors and temporary agencies. The NLRB essentially exempts the company for which the work is being performed from any responsibility, meaning that workers have to organize the contractor. If the organizing succeeds but then the contractor loses its contract, the workers' attempt to secure independent representation is rendered meaningless. The host of legal technicalities associated with contract labor expands the options for employers to resist employee organizing. We even found one case in which a temporary agency dismissed a worker for "endangering relationship with client by participating in union activities."

We also received cases that demonstrated other important concerns, ranging from repeat offenders, such as one employer who vowed to "never do any goddamn business" with an employees' organization, to the promises and pitfalls of employer agreements to remain neutral during employees' organizing efforts.

We believe that the cases we have included will help all readers appreciate the barriers faced by workers brave enough to exercise their workplace rights. The object of this report is to raise public awareness about the injustices faced by workers and to promote active support for the renewal of workplace rights. ■

DESTROYING WORKERS' ORGANIZATIONS



An Administrative Law Judge determined that the owner of Englewood Hospital in New Jersey used this hate mail to arouse opposition to a unionizing effort by nurses even though he knew that there was no connection.

The cases collected by the IUD represent many industries, all parts of the country, large units and small, and collectively suggest that union busting has become the convention among U.S. employers. Although the tactical details vary, the theme of the employers' campaigns is consistent. Unions are portrayed as third parties interested primarily in dues. Union organizers are described as "pushers" who make as many promises as required to "sell" the union. Workers are warned that there are no guarantees, that if they vote for independent representation the two sides will "bargain from scratch," and that wages, benefits, and working conditions are just as likely to get worse as they are to get better.

The intention of the standard employer campaign is to exploit workers' fears. Attorneys and consultants who craft these union-busting strategies know that workers might choose not to exercise their right to organize out of fear—fear of job loss, fear of strikes, fear of management retaliation. It is no accident that antiunion campaigns typically suggest that either closing or layoffs could result from unionization. Although such threats are technically unfair labor practices (ULPs), the employer's free speech rights ensure that with care the

message can be conveyed without committing a violation. Even employers who are less careful can use the closing threat to undermine support and simply live with the ULP, since there is no effective penalty save in the most extreme cases where a bargaining order is issued.

Employers also exploit workers' apprehension of strikes, calling attention to strike activity and warning that permanent replacements will be hired if a strike is called. Management intimidates workers with direct threats and more subtle warnings and delivers the message in a variety of formats including letters, captive audience meetings, one-on-one lectures, and the media. Legal challenges and delays also have a debilitating effect, contributing to the dashed hopes of potential union supporters.

The best way to understand the effectiveness of the union-busting model is to look at some examples of how it works. The five cases in this section illustrate a range of employer campaigns of varying intensity and emphasis.

AERO METAL FORMS When the fifteen employees of Aero Metal Forms sought to organize a union, the company's owner hired an attorney who designed a

Even though a strong majority of employees voiced their support for independent representation, first by signing this petition and later in an NLRB election, the owners of O'Brien Memorial Nursing Home vigorously opposed them. Thirteen workers were fired for union activity, and the home pursued legal appeals for several years to avoid collective bargaining.

AERO METAL FORMS, INC. ■ International Association of Machinists (IAM) WICHITA, KANSAS

AERO METAL FORMS is a job shop engaged in the manufacture of sheet metal and fiberglass parts for military aircraft. Ninety-five percent of Aero Metal's business comes from the Department of Defense. Founded in 1981 by James Zaudke, who is the owner and president, the company's only facility is located in Wichita.

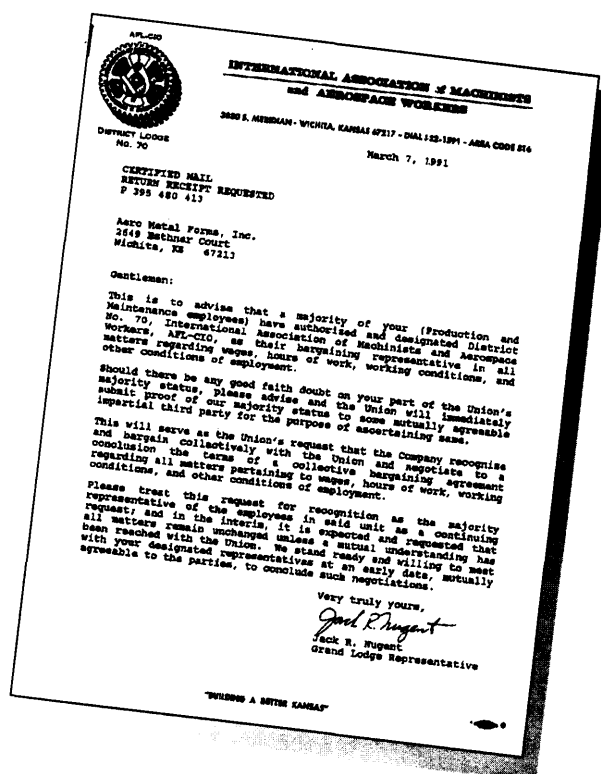
An IAM organizing campaign was initiated by employee Tom Wood, who met with a group of fellow workers on February 25, 1991. Within ten days a majority of the workers had signed a union authorization petition. Two certified letters were mailed to Aero Metal Forms president Zaudke, one declaring majority status and requesting recognition, the other explaining employee rights under the Wagner Act.

The letters were delivered at noon on March 8. Tamara Cummins, Zaudke's secretary, opened them and read the demand for recognition out loud to bookkeeper Janet Lester. Cummins commented that Zaudke would be "greatly upset" and "hell to work with." When he returned from lunch a short while later, Zaudke and Cummins met in his office. As Lester later testified, she was called in and told that Mr. Zaudke was going to lay off Tom Wood "because his dad is some big shot in the union at Boeing." Lester was then instructed to "say what they wanted me to say about when they received the letters.... I stated to both of them that I would not lie."

Lester's refusal to lie foiled a hastily crafted plan to disassociate Wood's layoff from the union-organizing drive. Nonetheless, at 3:30 that afternoon Zaudke informed Wood that he was laid off for "lack of work." One week later on March 15 Zaudke terminated Lester for "poor work performance."

The IAM filed a petition for an NLRB election on March 12, with the support of twelve of the fifteen employees. Aero Metal retained attorney William Dye of the law firm of Foulston & Siefkin to advise and assist with an antiunion campaign. Dye trained supervisors to identify and combat union supporters. Under his guidance, Zaudke distributed a written set of instructions to the supervisors explaining carefully "the things we can and cannot do during an organizing campaign."

Captive audience meetings for employees commenced and were held regularly until the election. At the captive audience meetings, standard antiunion messages were delivered. The meetings were reinforced by a personal letter to each employee from Zaudke and by a handout with questions and answers about unions. Workers were



Two-and-one-half hours after the owner of Aero Metal received this letter by certified mail notifying him that his employees supported independent representation, the leader of the effort to unionize was fired.

warned that they would probably be forced on strike by the union, that the law gives the employer the right to hire permanent replacements for strikers, and that the company would in fact replace them.

The workers were also told that the employer did not have to agree to any union contract demands, and that they could lose employer-provided benefits because negotiations would start from scratch. They were threatened that the company might go out of business if it felt it could not afford the cost of a union contract. In addition, standard questions were raised about the intrusion of a third party and about the union's motivation and credibility.

The antiunion campaign also was waged on the shop floor. Zaudke and supervisors remained friendly to workers who expressed doubts about the union, while union supporters were treated with hostility. However, this disparate treatment was handled very carefully and disassociated from any mention of the union.

KANSAS DEPARTMENT OF HUMAN RESOURCES
 DISTRICT 01 OFFICE NO. 510
 501 E. PAWNEE BOX 16900
 WICHITA KS 67216-0900

THE CLAIMANT IS CLEARED FOR PAYMENT AS LONG AS THE ELIGIBILITY REQUIREMENTS ARE MET. THE CLAIMANT WAS DISCHARGED BUT NOT FOR MISCONDUCT CONNECTED WITH THE WORK.
 THE CLAIMANT REPORTS BEING FIRED. THE EMPLOYER REPORTS THE CLAIMANT QUIT. THE EVIDENCE PRESENTED SHOWS THE CLAIMANT WAS SEPARATED DUE TO A LACK OF WORK OR WAS DISCHARGED BUT NOT FOR MISCONDUCT CONNECTED WITH THE WORK.

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 THE CLAIMANT REPORTS BEING FIRED. THE EMPLOYER REPORTS THE CLAIMANT QUIT. THE EVIDENCE PRESENTED SHOWS THE CLAIMANT WAS SEPARATED DUE TO A LACK OF WORK OR WAS DISCHARGED BUT NOT FOR MISCONDUCT CONNECTED WITH THE WORK.

Two additional union supporters lost their jobs, Ken Southworth and Gary Spencer. On March 25 Southworth was laid off from the plaster pattern shop. Although the union did not contest the layoff because the work load in the plaster pattern shop was declining, there was a dampening effect on support for the union nonetheless. Prior to the layoffs of Wood on March 8 and Southworth on March 25, Aero Metal had never laid off an employee in its ten years of operation.

Gary Spencer, maintenance man and strong union advocate, attracted increased attention from Jim Zaudke. Starting in early March Zaudke began to criticize Spencer's work and question his decisions. As Spencer recalls, "All of a sudden Zaudke started criticizing everything I did. I mean almost every morning when I came in Zaudke would holler at me in front of everybody that I screwed up this or that job the day before, or that it took me too long." When Spencer reported to work on March 29, "I didn't think I could make it through the day, I was so nervous I couldn't even sleep the night before." Zaudke started right away, first criticizing Spencer for ordering too many casters, then reminding him that he had ordered light bulbs six months earlier that were too expensive. Finally Zaudke said, "I can't put up with your incompetence any more. I don't have to, and I'm not going to." Distracted and assuming that he had been fired, Spencer gathered his belongings and left.

When he returned to pick up his final paycheck the following Monday, Spencer asked Zaudke why he had been fired. Zaudke replied, "I never fired you, and I have witnesses." When Spencer asked if it had all been a misunderstanding, Zaudke would not answer.

The April 22, 1991 election resulted in a six-to-six tie with three challenged ballots. The union filed several unfair labor practice (ULP) complaints regarding the election behavior of Aero Metal. An NLRB field examiner determined that most of the ULP charges were serious enough to warrant a hearing. A notable exception was the discharge of Gary Spencer, which was judged to be unrelated to the organizing campaign. The field examiner's conclusion stands in stark contrast to the one reached by the Kansas District Unemployment Insurance office, which awarded Spencer unemployment benefits: "The claimant reports being fired. The employer reports the claimant quit. The evidence presented shows the claimant was discharged but not for misconduct connected with the work."

The Kansas Unemployment Insurance office ruled that Gary Spencer had been discharged. Nonetheless, the NLRB accepted the employer's word that Spencer had quit. The board refused to hold a hearing to determine whether he was fired for union activity.

A hearing was held by an administrative law judge (ALJ) on October 1 and 2, 1991, but a decision was not issued until June 3, 1992. The ALJ ruled that the behavior of Zaudke and Cummins in the first few hours following receipt of the union letter on March 8 was illegal, including the discharge of Tom Wood. The judge was openly critical of Jim Zaudke ("for whom truth must serve a business purpose") and his secretary Tamara Cummins ("testifying without regard for the truth"). However, the entire antiunion campaign subsequent to the firing of Wood was judged to be acceptable. The discharge of Janet Lester was allowed. The ballots of Southworth and Spencer were thrown out. The company appealed the decision regarding Wood, and IAM appealed the decision regarding Lester.

On February 10, 1993, the NLRB overturned the ALJ on only one point: Janet Lester's firing was ruled a ULP, as she was discharged "because she refused to fabricate evidence." Tom Wood was awarded \$3,325 plus interest for lost wages; Janet Lester was awarded \$1,200 plus interest. Tom Wood's ballot was opened on April 5, the IAM was declared a 7-to-6 winner, and the union was certified April 25, 1993.

By this time all but one of the seven workers who voted for the union had been harassed into quitting and union support was basically gone, making negotiation of a collective bargaining agreement virtually impossible. The IAM could not persuade any of the employees to participate in negotiations, and it withdrew as collective bargaining agent in April 1994.

Although the NLRB ultimately ruled that the discharges of Wood and Lester were violations and Aero Metal was forced to pay approximately \$5,000 in lost pay and interest, the bulk of the company's intimidation campaign was deemed legal. By carefully training supervisors and avoiding any reference to the union when badgering employees, the company ensured the ultimate defeat of the IAM while escaping any lasting consequences from the NLRB ruling. ■

ROCK-TENN CORP. ■ **United Paperworkers International Union (UPIU)** COLUMBUS, INDIANA

ROCK-TENN CORP., based in Norcross, Georgia, owns more than sixty paper industry facilities in the United States and Canada. Most are nonunion, but the company has purchased fifteen unionized shops and has maintained a bargaining relationship with the Paperworkers at those facilities. Its acceptance of existing collective bargaining agreements stands in sharp contrast to Rock-Tenn's tenacious opposition to organizing at its nonunion operations.

With the help of the UPIU, workers at Rock-Tenn's Columbus, Indiana, facility began organizing in July 1989. The employer immediately responded with an aggressive antiunion campaign. Eight employees were discharged, union supporters were placed under surveillance, a no solicitation-no distribution rule was discriminatively enforced, employees were interrogated about their union sympathies, and management threatened to close the plant and reduce benefits. The union lost a February 1, 1990 election 50-70.

The UPIU filed numerous unfair labor practice (ULP) charges, and the NLRB issued complaints in October and December 1989, and March 1990. The three complaints were consolidated, along with union objections to the election. The board set a hearing date of April 18, 1990. However, Rock-Tenn continued to harass and discriminate against union supporters. As additional charges against the company piled up, the board ordered the hearing rescheduled first to June 11, then to September 10, and finally to December 10, 1990.

Frustrated by the delays, the workers and their union decided that it would be faster to file petitions for a second vote (allowed one year after a union defeat) rather than to wait for an NLRB ruling. As the anniversary of the first election approached, the union withdrew its objections and settled the remaining ULP charges.

The workers in Columbus began a new organizing drive and filed for a second election with signatures from a majority of employees. The employer's conduct did not change. Nonetheless, the union won a February 5, 1991 election by a 78-57 vote and was certified as bargaining agent on February 22. This was the UPIU's first organizing victory at an existing Rock-Tenn plant.

Negotiations began on May 20, 1991, three months after the second election and twenty months after the initial organizing effort. After fifteen sessions over the next five months, no agreement had been reached on



Frustration quickly replaced joy after this celebration of an NLRB election victory. Rock-Tenn's managers harassed the workers' elected leaders while its lawyers evaded bargaining and pursued legal appeals.

any substantive issues. At negotiations on October 16, 1991, Rock-Tenn announced that it had evidence that the union was no longer supported by a majority. The company then proposed that any contract should only last through February 22, 1992. This bargaining stance was based on an NLRB decision that allows employers to "insist on a contract duration coextensive with the certification year...by showing that it had a reasonably based doubt as to the union's majority status."

The UPIU decided to solicit membership cards to demonstrate that it still had majority support. On December 6 the union presented membership cards from 65 percent of workers as proof. Rock-Tenn's lawyer Larry Forrester ignored the evidence and reiterated that the company would not accept a contract beyond February 22, 1992, and that this was not a bargaining position. The company even refused the union's offer to have a neutral third party conduct a card check.

Meanwhile, plant manager Roy Young had recruited employees Holly Trimble and Glenda Sowders to circulate a decertification petition. They had been allowed to move about through the plant during work time to solicit signatures. On December 10, Trimble and Sowders drove to Indianapolis in a company-provided car and filed a petition to decertify the UPIU. Both employees were paid for their time. However, the decertification petition was postponed indefinitely because the UPIU got wind of what happened and filed new ULP charges.

The company immediately accelerated its antiunion tactics. When press operator Robbie Baker was called into his supervisor's office after an argument, he asked his union steward Cliff McCrory to go with him. In a blatant violation of Baker's legal right to have a steward present (known as Weingarten rights), McCrory was physically prevented from entering the office. The supervisor warned him, "If I catch you off your job playing union steward, I will clock you out.... This union stuff is going to go."

On another occasion, department head Bill Snyder told janitor Barbara Gruhl, "We have a majority of the people against the union and we're going to put a stop to it permanently.... Those that are causing all these problems are going to be severely punished." This was no idle threat. Shop steward William Schonfield received a written warning for "standing around" on the first day he revealed his pronoun sympathies by announcing his role as steward. A few weeks later he was suspended for

"I'm tired of all this, and I tell you there's not going to be a union right now. We made sure of that, and we're going to put a stop to it permanently. Those that are causing all these problems are going to be severely punished, I'll see to it personally myself."

Rock-Tenn department head Bill Snyder, ten months after workers voted for union representation and two weeks after 65 percent of them signed a petition reaffirming their union support.

three days after being reported for arguing by Trimble and Sowders (the employees who circulated the decertification petition).

Local President Kathy Ellis was penalized for absenteeism for "union business" when she went to the NLRB Regional Office to answer a charge filed by the company. Later, she was disciplined for defending a long-time employee who was sent home early for a supposed quality control violation.

And so it went. On May 25, 1993, an administrative law judge (ALJ) decision rejected Rock-Tenn's claim that the union had lost its majority and found the company guilty of all of the unresolved violations mentioned above. These included violation of Weingarten rights and interfering with NLRB processes. Other than compensating Schonfield and Ellis for their losses due to the discrimination, the penalty recommended by the ALJ merely required Rock-Tenn to "cease and desist" from antiunion activity, to bargain in good faith, and to post a notice summarizing the NLRB order.

These penalties are all that are allowed under the law, even in cases such as this in which the ALJ decried Rock-Tenn's "widespread and long-continuing misconduct, demonstrating a general disregard for the employees' fundamental rights." Rock-Tenn's response was predictable. The company continued to delay dealing with the UPIU by utilizing the legal process. It filed an exception to the ALJ decision and appealed to the NLRB. ■

TEKSID ALUMINUM ■ Aluminum, Brick and Glass Workers (ABGW)

DICKSON, TENNESSEE

WORKERS AT the Teksid Aluminum plant in Dickson, Tennessee, produce aluminum cylinder heads for automobile engines. Teksid is owned by Fiat, an Italian automobile company which is highly unionized in its home country. Fiat opened the plant at Dickson in 1987 and transferred management personnel from Italy to direct the operation.

In January 1989, the ABGW launched an organizing campaign with the assistance of the Industrial Union Department. The Italian managers responded with a vehement antiunion effort which would eventually include numerous violations of the law. Their response is representative of many foreign-owned companies, which work with unions at home but follow the American model of union busting in the United States.

Teksid's effort to defeat the ABGW campaign was coordinated by Richard Figari, director of human resources. Figari referred to workers who supported the ABGW as "union slime." In a series of captive audience meetings held the day after the organizing campaign went public, he expressed the company's firm opposition to unionization and his concern that "the hostility or the level of antagonism that is being created...at the plant is really not conducive to a good relationship with employees."

The key targets of Figari's hostility were Bobby Felts, Steve Forcum, and Gary Johnson, leaders of the ABGW campaign. On separate occasions Felts and Forcum were told not to talk with other workers about the union. Felts and Johnson were forbidden to take breaks together. A new "no talking" rule was established, but only enforced against union supporters. Supervisors followed Johnson and Felts into the break room, the locker room, and the parking lot.

Two days after union supporters reported to work wearing union buttons, Figari circulated through the plant distributing antiunion buttons. When employee Randy Crowell declined an antiunion button because "I'm not campaigning either way," he was told to get a broom and sweep the basement. When he emerged covered with grime four hours later, his supervisor asked "Where's your union button?" and then laughed and walked away.

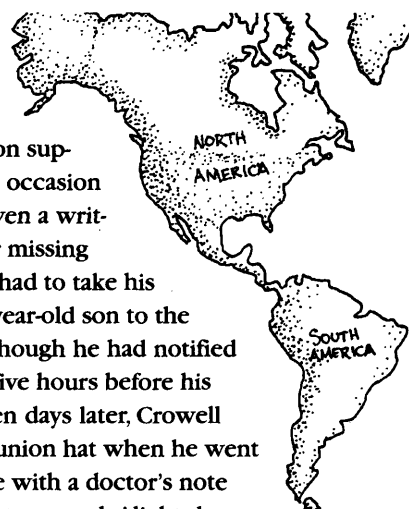
The incident convinced Crowell to support the union, and he wore a button for the first time the next day. He then became a visible target of Teksid's union-busting campaign. Figari used the firm's attendance

policy as a ploy first to discipline and ultimately to discharge this union supporter. On one occasion Crowell was given a written warning for missing work when he had to take his asthmatic two-year-old son to the hospital, even though he had notified his supervisor five hours before his shift started. Ten days later, Crowell was wearing a union hat when he went to Figari's office with a doctor's note recommending two weeks' light duty because of recurring wrist tendonitis. Figari threw down the note, said there was no light duty, sent Crowell home, and issued another written warning and a three-day suspension. When Crowell missed another day because of legal problems in family court, he was fired, even though other workers had not been penalized for missing work under similar circumstances.

While building the case to justify firing Randy Crowell, Teksid's Italian managers were also going after Steve Forcum. On March 16, just prior to the beginning of the 7:30 a.m. shift, Figari entered the break room. Forcum and two other union supporters questioned him regarding the thousands of dollars the company was spending on legal fees in their effort to "bust up the union campaign," rather than using such funds to provide added benefits for the workers. Figari responded directly to Forcum, "Steve, you won't be around here to enjoy any of the benefits anyway."

Two weeks later Production Manager John Barbaro approached Forcum and asked to speak with him. He explained that production was down because of the "high tension" caused by the union campaign. After saying, "I respect your rights to do what you're doing; we have unions in Italy," Barbaro asked Forcum to help get production back to former levels. When Forcum indicated that he would continue to push for independent representation, Barbaro exploded, "I could lose my job, and if I go you go with me!"

Supervisor Enzo Pagliuzzi also participated in Teksid's efforts to intimidate union supporters. Shortly after the campaign started, Pagliuzzi accused union supporter





Many foreign owners of U.S. companies accept unions in their home countries but vigorously oppose organization efforts in their U.S. plants.

Wade Ross of trying to run over him with a fork lift. Ross explained that the near accident had been caused by a defective horn, and Pagliuzzi ordered him to prepare a written report. At the end of the shift Pagliuzzi entered the locker room and asked Ross for the report. Ross, who had changed out of his work clothes, had left the report in the fork lift, but Pagliuzzi would not let him retrieve it—first because he did not have his safety glasses and then because he was not wearing his work shoes. When a coworker got the form and brought it to Pagliuzzi ten feet from the locker room door, he refused to take it, demanding that Ross put on his glasses and shoes and personally deliver it. An argument ensued and Ross was suspended for five days. An NLRB judge later described the incident as “a classic case of provocation in order to induce a punishable response from a known union supporter.”

A few months into the campaign Bobby Dickens reported to work wearing a union button. His supervisor pointed to the button and commented, “It looks like somebody shot off all over your shirt.” Later in the shift a vocal antiunion employee reported to the same supervisor that Dickens was trying to steal an inexpensive file (which he had placed in his back pocket while cleaning up his work site). Dickens was fired for theft.

The ABGW filed for an election on June 26, 1989, and a vote was scheduled for September 1. Teksid’s anti-union campaign continued, but it shifted away from attacks on individual union supporters to more general warnings. For instance, a notice posted throughout the plant titled “The Truth About Negotiations” warned, “If the union should win the election, all policies and procedures, including wages and benefits, will be frozen until

there is an agreement reached.... Negotiations often last many, many months and in some cases years.”

In the final months before the vote Teksid President Riccardo Tarantini got involved. In mid-August he held a private two-hour meeting in his office with John Harrell, an active union supporter and a “picture perfect” employee. After asking Harrell why he was wearing a union hat and button, Tarantini spent most of the meeting soliciting ideas for improvements in the plant. After thanking him for his suggestions, Tarantini said that he very much wanted Harrell to be part of the “team” and to advance in the company.

Two days before the election Tarantini held a series of small group meetings with employees at which he read a prepared statement: “By now you should all understand that I am totally against the union... You can vote for this union and make me negotiate against you, or you can vote against this union and help me shape Teksid into a team.”

The union lost the election 97–60 and subsequently filed numerous objections and unfair labor practice charges. Teksid continued to harass union supporters, leading to additional charges. One week after the vote Director of Human Resources Figari threatened to fire union supporter John McElhiney for marijuana use. After McElhiney denied the accusation, Figari blew up: “Stay away from the union and the NLRB, because if you go to them, I’m not kidding you, I’ll smear your name so far in the papers that you’ll never get another job.” Over the next six weeks the three leaders of the union campaign—Bobby Felts, Steve Forcum, and Gary Johnson—were all fired.

A lengthy process of hearings and legal briefs eventually resulted in an administrative law judge (ALJ) decision more than two years later. On December 19, 1991, Teksid was found guilty on almost all counts. The company appealed and another year and a half passed. Finally, on May 28, 1993, the NLRB issued a decision upholding the ALJ. Other than correcting discriminatory treatment of eight employees (including reinstating four with back pay), Teksid’s penalty was to post a notice agreeing to “cease and desist” from its unlawful antiunion activity. Ironically, the NLRB also ordered a new election and scheduled it for December 5, 1993. However, the order was virtually meaningless since in the intervening four years all organizing committee members had quit or been fired, and the union had little support among the workers in the face of the company’s demonstrated ability to ignore the law. The ABGW eventually withdrew from the election. ■

FLEX CABLE AND FURNACE PRODUCTS ■ United Automobile Workers (UAW)

MORLEY, MICHIGAN

WHEN OWNER Richard Balaguer moved Flex Cable and Furnace Products from Grand Rapids, Michigan, to the small town of Morley fifty miles away, he was praised by town leaders for providing jobs and for his financial donation toward a new community park. However, the workers he hired soon found Balaguer to be a less than desirable boss with a take-it-or-leave-it attitude. In the spring of 1991 a group of workers contacted the UAW with complaints of poor wages and benefits, and sexual harassment of women employees by male supervisors.

The workers had approached the union in spite of prior warnings from plant manager Ed Schultz that the plant would close if they ever tried to organize. He had explained that Balaguer moved to Morley from Grand Rapids in order to escape a union that represented workers at that facility. In May when Balaguer and Schultz caught wind of the fact that the twenty employees were discussing joining a union, they threatened to close the Morley plant as well. On May 24, the Friday of Memorial Day weekend, Balaguer instructed all of the employees to stop working fifteen minutes before the end of the shift. He called them outside and had them watch as he padlocked the door, announcing that the plant was closed and that they were all terminated.

The following morning a help-wanted ad appeared in the local newspaper for positions immediately available beginning Tuesday, May 28. Over the course of the holiday weekend, eleven of the twenty workers terminated on Friday were telephoned and told to report to work the following Tuesday. The nine employees suspected of being involved with union activity were not invited to return. The plant resumed operation without interruption on the 28th.

If there were any questions about the bogus nature of the "plant closing," they were answered a few weeks later when the Morley Village Council unanimously approved a twelve-year tax abatement for Flex Cable. At the July 8 meeting Balaguer announced that employment at the factory had risen to twenty-nine, and he predicted that by the end of 1992 the company would employ nearly fifty.

The UAW filed charges with the NLRB, which decided to issue a complaint and schedule a hearing. In response, Flex Cable agreed to reinstate three people effective July 9, but at reduced benefit levels and as probationary employees. The employer also eliminated fam-

ily coverage from its health insurance plan for all workers. At a meeting of plant employees on July 19 Schultz announced a new rule prohibiting anyone from wearing a union hat or pin; foreman Don Brocker pointed to Teresa Utter and Dave Reichard who were wearing UAW Organizing Committee buttons and said, "That means you."

On January 2, 1992, seven months after the plant was closed and union supporters terminated, the NLRB negotiated a settlement agreement with Flex Cable. The nine discharged workers received various amounts of back pay totalling over \$31,000. However, all but two waived reinstatement. Health insurance benefits were returned to former levels for all employees. But the unionization effort was destroyed.

As UAW International Representative Ken Bieber observed, "The company killed the workers' organizing attempt before it ever had a chance to really develop.... To the workers involved it appeared that this employer was not afraid of the NLRB or the law. By the time the NLRB settlement was posted in the plant we had no support left." ■

Pioneer
Tuesday, May 28, 1991
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This ad appeared the day after the company owner "closed" the factory in reaction to his workers' efforts to organize.

WINDSOR HOUSE, O'BRIEN MEMORIAL, AND CARRINGTON SOUTH

■ Service Employees International Union (SEIU)

YOUNGSTOWN, OHIO

"People are being treated like dogs. People need to realize that they have choices and they have voices. When they band together, anything is possible."

CHRISTINA JACON KLARIC
Practical nurse, Windsor House



Worker enthusiasm for independent representation incensed employers, generating a coordinated response from nursing homes in the Youngstown area against union representation.

THERE ARE approximately eighty-five nursing homes in the area around Youngstown. In response to workers' requests, SEIU Local 627 has been actively organizing employees of the nursing homes since 1990. The local has established the Coalition for Better Care to coordinate community support for the organizing efforts. In reaction against their workers' interest in unionization and the SEIU's organizing success, nursing home owners have joined together to wage war against Local 627 with the aid of antiunion law firms. One NLRB agent said of the situation, "What happened in this region in the steel industry in the 1930s, is now happening in the nursing home industry in the 1990s."

In November 1990, the SEIU filed for election for a unit of 132 service and maintenance employees and licensed practical nurses (LPNs) at Windsor House, part of a chain of nursing homes owned by John Masternick. The employer's legal challenges to the makeup of the unit were rejected, and Local 627 won the February 27, 1991 election by seven votes. Windsor House first filed objections to union conduct during the preelection period, then appealed when the NLRB regional director found the objections without merit and certified the union as bargaining agent.

By the summer of 1991, the game plan of John Masternick and the lawyers representing Windsor House was becoming obvious—manipulate the legal process by pursuing every possible challenge and appeal to delay dealing with the union and avoid bargaining. A hearing was scheduled on the employer's appeal, but at the last minute the Windsor House attorneys filed for a postponement. When the November 15, 1991 hearing officer's report went against the company, exceptions were filed. Eventually, the NLRB ruled against the employer's exceptions and upheld the certification of Local 627 on November 30, 1992.

When the SEIU contacted Masternick to schedule negotiations, he refused to bargain on the grounds that the original unit determination was inappropriate because the LPNs were grouped with other employees. This forced the union to file unfair labor practice (ULP) charges for failure to bargain. On March 10, 1993, the NLRB issued a bargaining order, but Windsor House refused to comply. In response the NLRB sought enforcement in federal appeals court. During the four years of

legal delays there was a near total turnover in the workforce at Windsor House.

While the legal battle dragged on against Windsor House, SEIU Local 627 was organizing workers at other nursing homes in the area. One of them was O'Brien Memorial in Masury, Ohio, also owned by John Masternick. The employer's campaign against the union included the standard themes—unions are third parties, union dues and fees are excessive and unnecessary, and unions will take you out on strike. But there was another more important theme directly tied to the company's legal maneuvering in the Windsor House case. A May 1992 letter from Masternick to O'Brien employees explained the situation in detail:

There are some very important things you should know about this union. Way back in October 1990 this exact same union organizer—Debbie Timko—attempted to unionize employees at our sister facility Windsor House, with the exact same promises they are now making to you. After almost two years, there is still *no* union contract in place at Windsor House. In fact, because of different legal cases that are pending, the company and the union have not yet even started to negotiate.

Thus the employer was cynically manipulating the National Labor Relations Act in one case, then blaming the union for failing to deliver in an effort to convince workers in another campaign that organizing is fruitless.

In spite of Masternick's carefully crafted strategy, the SEIU won the election at O'Brien on August 26, 1992, by a margin of 88–60 for a 180-member unit of service and maintenance workers and LPNs. The employer fired a total of thirteen workers for participating in the organizing campaign. The union reached a voluntary settlement of these discharges prior to a scheduled NLRB hearing.

Following the pattern of legal evasion utilized in the Windsor case, O'Brien Memorial filed thirteen objections to the election. Included in the objections were two that almost always lead to a hearing (and attendant delays) because of their serious nature. One accused the union of "creating an atmosphere of fear, intimidation, and coercion"; the other alleged that the union made anti-Semitic remarks prior to the election. The NLRB regional director specifically addressed the charges of anti-Semitism in a January 15, 1993 decision. He noted

that the only relevant evidence offered by O'Brien was "one isolated cartoon" in a union newsletter "which depicts a meeting conducted by the employer in a 'Gestapo Meeting Hall' with employees chained to their chairs." Obviously puzzled by the argument that this cartoon was an anti-Semitic appeal to racial prejudice, the regional director dismissed the objection.

The NLRB agreed with the regional director's decision to throw out eleven of the objections (including the alleged anti-Semitism) and ordered a hearing on the remaining two. In an August 2, 1993 decision, the hearing officer rejected the employer's claims that the union used fear, intimidation, and coercion. The three witnesses for O'Brien were antiunion activists who had "attended union organizing meetings for the purpose of voicing opposition to the union." They attempted to twist union warnings that the employer would retaliate against union supporters, interpreting them as threats that the union would retaliate against union opponents. The hearing officer described their testimony as "biased, lacking reliability, nonresponsive, evasive, argumentative, selective, and inconsistent." In effect, they fabricated threats in order to assist the employer in its litigation aimed at avoiding the union. O'Brien, of course, appealed the decision.

While fighting the SEIU in court, John Masternick joined with other nursing home owners and antiunion law firms to conduct seminars titled, literally, "How to Keep Debbie Timko and the Service Employees International Union out of Your Home." The seminars were conducted by John Masternick and Mary Jane Jones, the administrator of Opportunity Homes which was organized by Local 627 in 1992. The two law firms involved in the seminars were Joondeph and Shaffer from Akron and Duvin, Cahn and Bernard from Cleveland. Two seminars were held, one in Columbia County and the other at the corporate offices of Windsor House in Gerard, Ohio.

Carrington South is one of the nursing homes that has participated in the coordinated management campaigns to resist organizing by SEIU Local 627. In response to workers' strong interest, the SEIU began organizing at Carrington South in the spring of 1993. An election was scheduled for June 3, 1993, for a unit of 116 service and maintenance workers.

Consistent with the coordinated employer strategy, Carrington filed a blocking charge on June 1 based on the appearance of a union picket sign at a press confer-

From CARRINGTON'S CORNER June 21, 1993

"We've got some difficult days ahead. But it really doesn't matter with me now. Because I've been to the mountain top. Like anybody I would like to live a long life. Longevity has its place.... But I'm not concerned about that now....

And He's allowed me to go up to the mountain. And I've looked over, and I've seen the Promised Land. I may not get there with you, but I want you to know tonight that we as a people will get to the Promised Land.

So I'm happy tonight. I'm not worried about anything. I'm not fearing any man.

MARTIN LUTHER KING, JR.
April 3, 1968

ence. The regional office of the NLRB facilitated the employer's tactical delay by postponing the election with minimal investigation of the facts. The charges subsequently were dismissed and an election was held September 9. The SEIU won with a clear and uncontested majority.

Carrington South filed objections, alleging that the union's organizing campaign made inflammatory appeals to racial prejudice. Specifically, the employer argued that the union appealed to the racial prejudice of black employees against white employees. This claim was made in spite of the fact that all of the union staff members who worked on the campaign are white.

The only evidence cited to support this claim that actually dealt with the union's campaign conduct referred to four copies of the union newsletter "Carrington's Corner." Specifically, Carrington's lawyers presented three cartoons and one quote. Only one of the cartoons included caricatures that were racially identifiable: it depicted a black employee confronting a white supervisor. The quote in question was from Martin Luther King's famous "I've been to the mountain top" speech.

In his rejection of Carrington's case, the NLRB regional director noted that the union distributed twenty-three pieces of literature during the campaign. He concluded: "It is clear that the three cartoons in question and the quotation from Dr. Martin Luther King are not objectionable, and it is also clear that the union did not con-

Searching desperately for any reason to challenge the vote in favor of union representation at Carrington South, the nursing home's lawyers argued that this quote from Martin Luther King was used in an "inflammatory appeal to racial prejudice."

duct a campaign in which race was a significant aspect." Carrington's appeal to the NLRB was denied.

Given the weakness of the employer's charges, it appears that the only rationale for pursuing them was to provide a legalistic basis to delay certification in order to frustrate the workers' efforts to attain union representation. The charge of racial prejudice is a serious enough one that both the NLRB and the courts are likely to take it seriously regardless of the merits.

The parallel between the racial discrimination charges at Carrington South and the anti-Semitism charges at O'Brien Memorial is obvious. It should come as no surprise that Mary Jane Jones, who joined with O'Brien owner John Masternick in the anti-SEIU seminars described above, was subsequently hired by Carrington South to coordinate its antiunion campaign. The lawyer representing Carrington before the NLRB and the courts is David Shaffer of the firm Joondeph and Shaffer, and another participant in the seminars.

When Local 627 asked Carrington to bargain, the response was predictable. Letters from David Shaffer and from Carrington declined the requests. As explained clearly in a February 22, 1994 letter from Carrington, "The company filed objections... based on the fact that the union had made an appeal to racial prejudices.... The company believes that the rulings by the NLRB were wrong. The only way we can test the correctness of the NLRB ruling is to refuse to bargain so that the matter will be put into the court system."

While Carrington continues to fight Local 627 through the courts, Windsor Home and O'Brien finally have abandoned their attempt to avoid bargaining. Cases for both Windsor and O'Brien are currently pending before the U.S. Court of Appeals for Sixth Circuit; with a negative decision inevitable, however, the employer decided to negotiate. Collective bargaining was in progress as of July 1994. Though the union has been vindicated, the four-year delay at Windsor and two-year delay at O'Brien have denied workers (many of whom have moved on to other jobs) their rights to union representation. More important, the ongoing battle at Carrington reflects how coordination among employers and attorneys has spread the union-busting cancer throughout the nursing home community in the Youngstown area. ■

LABOR LAW AS A TOOL FOR EMPLOYERS



ANOTHER REASON NOT TO SIGN A CARD

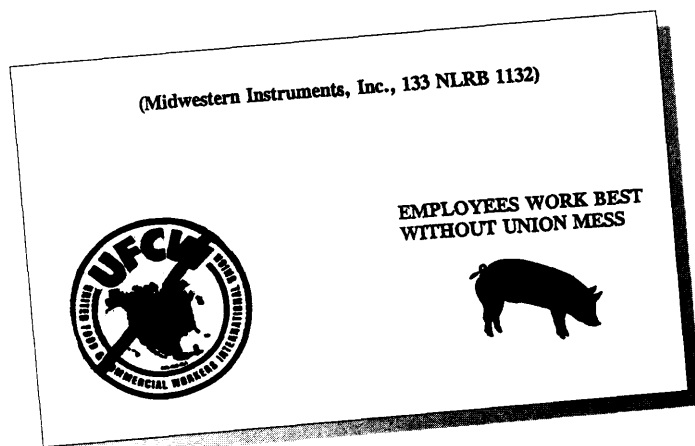


QUESTION: DOES HAVING A UNION
MEAN MY PAY CAN'T
GO DOWN?

ANSWER: NO

HERE'S THE NATIONAL LABOR RELATIONS BOARD
LAW:

***THERE IS, OF COURSE NO OBLIGATION ON
THE PART OF AN EMPLOYER TO CONTRACT TO
CONTINUE ALL EXISTING BENEFITS, NOR IS IT AN
UNFAIR LABOR PRACTICE TO OFFER REDUCED
BENEFITS."



This flyer distributed by Lundy's packing
is representative of employers' use of labor
law to disparage the value of independent
representation.

Labor laws do not protect effectively the rights of workers, and this is cause for concern. Even more distressing is the ease with which management lawyers can manipulate the legal process that is supposed to protect workers, turning it to the advantage of the employer. Most deplorable is the use of federal court and NLRB interpretations of labor law as weapons to obstruct workers' efforts to exercise their rights.

Delays inherent in the NLRB process offer obvious advantages to employers. The options begin as soon as the union petitions for an election. The employer can delay the vote by refusing to accept the unit specified by the union, which will force a unit determination hearing. The employer can prolong the hearing process by presenting detailed evidence and testimony. Delays at this early stage allow the employer to prepare and set in motion an antiunion campaign. Even a few weeks delay can allow the employer's intimidation tactics to take hold and shift the momentum away from the union.

At the election the employer can challenge all voters who conceivably could be construed to fall outside the unit. In the case of a close vote, these challenges can delay certification for months, allowing for hearings, legal briefs, an original decision, and appeals.

If the union wins the election, the employer has available a range of delay options. Objections to the original unit determination can be raised. Alternatively, unfair labor practice (ULP) charges can be filed related to union conduct during the preelection period or on the day of the vote. In some cases, the conduct of a board agent during the vote may be the basis for an appeal. Employers can even tie up a case by raising issues that deal exclusively with NLRB procedures.

Once the union is certified, the employer can refuse to bargain, thereby forcing the union to file a ULP charge. This will allow the employer to raise again in federal court any objection that was denied by the NLRB regarding unit determination, union conduct, or board procedures.

Wear the Union Label... UNEMPLOYED

When workers at Crowley and Jennings Manufacturing attempted to form a union, the company hung a twelve-by-three-foot banner with this message inside the factory. Another huge banner proclaimed "Vote No—Save Your Job." Without a hearing, the NLRB determined that these banners did not threaten job loss or plant closing but were expressions of "employer free speech."

In fact, the tactic of openly committing ULPs to get the union to file charges can be used at any stage in the process, since ULP filings almost always cause postponements of hearings to allow for consolidation of all pending issues related to a case.

The cases collected by the IUD include examples of all of these types of delays. With the help of experienced attorneys, strong-willed employers can delay bargaining for years. In one instance workers first voted for a union in 1964. The case has bounced back and forth from the NLRB to the federal courts and even went all the way to the Supreme Court in 1974. Thirty years later it is still tied up in litigation, and the workers still have no independent voice.

In recent years employers have used the possibility of delay as a campaign theme to discourage workers from supporting a union. Verbal threats may be delivered to the work force in captive audience meetings or spelled out carefully in letters to employees or flyers distributed in the workplace. Some companies have pursued all possible appeals in one facility, then reported the delays as evidence of union weakness in organizing campaigns at other locations.

Although delays are the most obvious manifestation of how employers can abuse the union representation process, there are other ways the process can assist employers who wish to evade unions. One option is to change contractors or sell the business, perhaps under the protection of bankruptcy court. Depending on how the transfer is handled and on the status of the representation proceedings, union certification may be withdrawn or denied. Another is to pursue groundless charges against the union, possibly based on fabricated evidence.

The cases in this section touch on many of the methods used by employers to wrest advantage from the NLRB process. Examples of delays of various types, threats of delay, fabrication of evidence, and the NLRB's successorship doctrine are all included.

HARPERCOLLINS Lawyers for HarperCollins dragged out unit determination hearings for eight days. A five-month delay from the union petition to the election allowed the company's "liberal" managers to gain control of the situation with a powerful antiunion campaign. The delays also allowed for a series of personnel moves, including hiring eleven new employees who then voted in the election.

FOUNTAIN VALLEY This employer took advantage of every delay option: the unit was contested, delaying the election; voters were challenged, delaying certification; and certification was appealed, delaying the start of negotiations. Fountain Valley then used evasive bargaining to stall negotiations and ultimately filed a ULP against the union as an excuse to renege on a negotiated agreement.

CROWN CORK AND SEAL This unionized employer vigorously opposed organizing in Puerto Rico. A letter to employees spelled out legal appeals options, stated openly that the company would pursue those options, and suggested years of possible delays.

DAYTON HUDSON'S This company filed legal appeals to postpone bargaining with a union at one store, then used the delays as antiunion campaign fodder when workers at another store attempted to organize. In support of a complex legal challenge to the union's preelection conduct, the company fabricated evidence and then had the gall to attack the union for not respecting the law.

CHOSUN DAILY NEWS This Korean employer's open violations of the law prompted a bargaining order from the NLRB in spite of a tie vote. To avoid the practical impact of the order, the employer reduced employment dramatically and then transferred ownership to another Korean contractor, which returned the work force to prior levels. Under NLRB successorship policy, this maneuver created a new bargaining unit and the bargaining order was rescinded. ■

HARPERCOLLINS ■ Communications Workers of America (CWA)

SAN FRANCISCO, CALIFORNIA

HARPERCOLLINS in San Francisco, owned by Rupert Murdoch, publishes psychology, feminist, and religious books. Half of the 150 highly educated employees are eligible for union membership, 80 percent of them women. The majority of the jobs require college degrees.

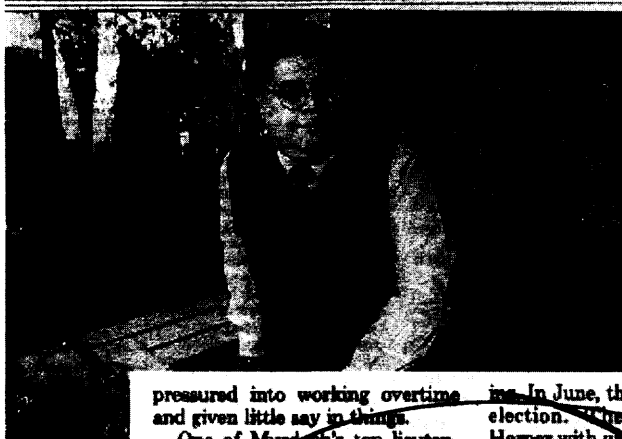
In 1990, out of a growing frustration with their working conditions, fifty employees founded what was called the Non-Management Group. The group met once a week during the lunch hour in the company conference room and issued memos requesting resolution of personnel problems. In response, the company set up several task forces to look into the problem areas. The task forces, made up of management and nonmanagement employees, met for months and submitted lengthy recommendations. Some small improvements were made. For example, the medical plan was changed so that the

employees could have a pap smear and an eye examination in the same year and have both covered. Months of work on the task forces and lengthy recommendations produced very little change. The workers soon realized they had no more voice in the decision-making process than they had before.

The workers concluded that if they wanted their concerns taken seriously, they would need independent representation by a union. They invited several unions to come and talk with them and eventually selected CWA. In the fall of 1992, the workers held their first organizing meeting with CWA. The union organizer distributed a pamphlet that outlined typical things employers do to fight workers' attempts to form a union. Gina Hyams, who emerged as a rank-and-file leader during the campaign, remembers the employees' reactions to the union's pamphlet: "Naively we thought, almost all our

SAN FRANCISCO EXAMINER

★ ★ Sunday, October 17, 1993



Carlson moved the s

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ratio mishmash. It
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as already arrived.
three-quarters of
management con-
sized Communica-
of America Local
in a union contract.

pressured into working overtime
and given little say in things.

One of Murdoch's top lieuten-
ants, HarperCollins CEO George
Craig, flew out from New York. As
Gina Hyams, a union supporter,
remembers it, Craig "proceeded to
literally yell at us for 1½ hours. He
said, 'The company considers this
nothing short of war. We'll fight
this at every turn. You're disloyal
and naive for doing this.'"

In March, four organizers — in-
cluding Hyams, who now works for
Mother Jones magazine — lost
their jobs in corporate restructur-

ing. In June, the union lost a close
election. The CWA, charging
Harper with waging a campaign of
intimidation, appealed to the Na-
tional Labor Relations Board. A
decision is expected in November.
The NLRB could order a new elec-
tion.

"It was an education," sighs
Hyams. "We thought it would all
work out, like all the self-help
books say."

Harper executives could not be
reached for comment on the union
battle.

In-house conflict notwithstanding, Harper plunges on. One
excited about a mix of new
newly republished titles. As
them: "Alchemy," a fable by
sultan author Paulo Coelho;
Area author Mary Mackey's
the-anthropological novel, "
Year the Horses Came"; and
packaged series by Emmett P
lecturer whose "Power: The
Constructive Thinking" helps
apire Alcoholics Anonymous.

For his part, Carlson show
"Rare Air: Michael on Micha
levelish photography book abou
recently retired basketball sup
being and commercial pilot.
Michael Jordan. He also pr
holds up a booklet and announc
ing compact disc titled "Sou:

San Francisco Examiner, 17 October 1993:
"The publisher's main claim to fame is its
line of New Age and recovery books,...
[with an] emphasis on self-help.... Late last
year, three quarters of Harper's non-man-
agement employees authorized Communi-
cations Workers of America Local 9410 to
win them a union contract.... HarperCollins
CEO George Craig said, 'The company con-
siders this nothing short of war. We'll fight
this at every turn. You're disloyal and naive
for doing this.'... 'It was an education, sighs
[union supporter] Gina Hyams. 'We
thought it would all work out, like the self-
help book says.'" While profiting from the
sale of self-help books, HarperCollins vigor-
ously resisted its own employees' efforts at
self-organization.

bosses are liberal Democrats; the company's profits come from publishing tons of progressive self-help books; if we decide to form a union, our management will just recognize that we're helping ourselves and they'll be civil and sit down and fairly negotiate a reasonable contract. We were wrong."

On December 18, 1992, CWA filed an NLRB petition for a unit of 83 employees (62 signed the petition). HarperCollins sought to exclude 20 employees from the unit (CWA agreed to 4). The NLRB held eight days of hearing in January and February, 1993. The hearings were prolonged by management lawyers who, for example, questioned a receptionist about her duties for three hours. The NLRB ultimately ruled with the union and included all 16 contested employees in the unit. However the decision was not issued until May 28 with the election scheduled for June 18.

During the intervening months the company implemented a standard union resistance campaign. Letters were sent to all employees at home, one signed by Vice President Clayton Carlson opposing "the insertion of an outside factor like CWA"; another was signed by all managers arguing that unionization "would not serve to promote cooperation and solidarity." CEO George Craig flew in from New York and held captive audience meetings. He declared "this is war," labeled as "disloyal" all employees involved in the campaign, then hinted that HarperCollins did not need to stay in San Francisco. Craig also promised that he would negotiate with an in-house association if employees dropped "the union bullshit."

Beginning in March the company made a series of personnel changes. Joanne Moschella and Erich Metting-Van Rijn were promoted out of the unit. Monica Baltz, Julie Wunderlich, Dawn Balzarano, and Gina Hyams were laid off. Balzarano was a vocal union supporter, and the other five were on the organizing committee. Eleven new employees were hired while the unit determination was being litigated, and all were allowed to vote in the election.

The aggressive resistance campaign succeeded. The CWA lost the June 18 election 31 to 36 with 4 ballots challenged. On August 31 the NLRB issued a complaint

against HarperCollins on twelve violations charged by the union, including the threats and promises voiced by CEO Craig and other managers, and the four terminations. A hearing originally scheduled for May 17, 1994, was moved up to December 1993 after CWA and key elected officials questioned the lengthy delay. It was later postponed to February 14, 1994. As of Labor Day 1994, the workers who supported the CWA were still waiting for a decision.

Regardless of the outcome of the NLRB hearings, it is unlikely that the workers at HarperCollins will secure the union representation that 75 percent of them requested when they signed the CWA petition in 1992. The company effectively used legal delays to buy time and attack the union's base of support. Looking back at the organizing experience Gina Hyams recalls, "I lost my job. I was very, very upset and afraid. It's a scary thing to lose a job in this economy. I felt many emotions but I did not regret what I had done.... The law says that union organizing is supposed to be a protected activity, but I can tell you from my personal experience that this protection is basically meaningless." ■

FOUNTAIN VALLEY REGIONAL HOSPITAL ■

American Federation of State, County and Municipal Employees (AFSCME)

FOUNTAIN VALLEY, CALIFORNIA



Frustrated by legal delays, professional employees picket to ask Fountain Valley to negotiate in good faith.

IN MAY 1986, the United Nurses Association of California (UNAC, now affiliated with AFSCME) was contacted by registered nurses and other professional employees at Fountain Valley Regional Hospital. Fountain Valley is a large doctor-owned hospital in the politically conservative Orange County. A six-month organizing campaign gained 520 authorization cards from a unit of 650 (80 percent).

UNAC filed for an election on November 18, 1986, and the delays began. The hospital demanded a hearing on the makeup of the unit and presented multiple challenges, insisting that a wide variety of technical, management, and confidential employees be excluded. The hearing stretched over eight days in December 1986 and January 1987. The NLRB issued its decision on the unit on April 1, 1987, and scheduled the election for April 30 and May 1.

Hospital management used the five-and-one-half-month delay to implement a heavy antiunion campaign replete with the standard threats, promises, and captive audience meetings. Two days before the election the director of nursing walked through the facility accompanied by an armed guard. She claimed that she had received threatening calls from union officials.

The campaign was coordinated by West Coast Industrial Relations Association, an openly antiunion consulting firm known for its "Maintaining Your Union Free Status" seminars. Based on papers filed by WCIRA with the U.S. Department of Labor, Fountain Valley paid over \$365,000 for union avoidance assistance during the first year of its battle with UNAC.

The election results were 278 for UNAC, 274 for no union with 28 challenged ballots (24 by the employer, 4 by the union). Hearings, legal briefs, appeals, and administrative delays chewed up a year and a half before the ballots were opened and counted. Finally in October 1988 the union was declared winner with a final count of 285 to 279. Fountain Valley refused to accept the results, appealed the decision to the federal courts, and refused to bargain, claiming that the union did not represent a majority of employees.

In fact, throughout the process of determining the election outcome, the hospital continued its antiunion

Your Union Working for You!

Fountain Valley Regional Medical Center fired a health care professional while she was on medical disability leave.

She was on leave because of an injury that occurred while performing her duties in the hospital.



She is a professional with 10 years of loyal and dedicated service to the hospital.

This health care professional contacted UNAC. The union filed a complaint on her behalf.

The Union got this dedicated professional her job back.

As this March 1993 flyer conveys, the professional employees' organization at Fountain Valley continued to defend the rights of its members in spite of seven years with no contract.

campaign prompting numerous unfair labor practice (ULP) charges. In January 1989 union activist Patricia Neal was fired. In addition, a series of charges piled up as Fountain Valley unilaterally changed conditions of employment while refusing to bargain with the workers' representative. Among the unilateral changes were installing a new "performance based" pay system, replacing bargaining unit employees with student nurses, implementing a two-tier wage structure, changing the method of assigning shift work, adopting new attendance rules, and reducing medical benefits.

A series of bargaining orders were ignored, which forced the NLRB to seek enforcement by the U.S. Ninth Circuit Court of Appeals. Finally on June 12, 1991, forty-eight months after the professional employees at Fountain Valley voted to be represented by UNAC, the court ordered the hospital to bargain.

Over the next twenty months, bargaining sessions were held once per month and progress was painfully slow. Lawyer Timothy Ryan and Human Resources Director Steve Luick represented Fountain Valley. They would attend, but they were not prepared to bargain seriously.

At the typical negotiating session the union team would present a detailed proposal, then Ryan and Luick would either reject it with no counterproposal, or promise to respond at the next session. At the next meeting they would say that they "forgot" to check with top management or "forgot" to collect the information necessary to reply.

Finally on April 12, 1993, agreement was reached when the UNAC resigned itself to accepting the status quo on most outstanding issues. Unbeknownst to the union, a decertification petition had been filed two days earlier. Union members ratified the contract on April 16, but Ryan and Luick refused to sign it. They claimed that the union had breached the agreement by circulating a flyer announcing that the UNAC had helped a professional employee get her job back after she was fired while on disability leave. The hospital filed a ULP charge against the union in an obvious move to invent a legal rationale for not signing the contract.

In the meantime, ULPs continued to pile up against Fountain Valley. First the hospital openly refused the legal right of Sandra Iyer to be represented by the union during a grievance hearing concerning her discharge (the right to be represented during disciplinary hearings is known as "Weingarten rights"). Then the NLRB reached a settlement with Fountain Valley that required the hospital to post a notice that it would no longer deny Weingarten rights. In direct violation of the posted settlement, the hospital informed the UNAC that it would not proceed with the grievance unless Iyer agreed to meet without the union as her representative.

On December 30, 1993, the NLRB Region 21 issued a complaint against Fountain Valley on numerous ULP charges, including violation of Iyer's Weingarten rights, violation of the settlement agreement regarding Weingarten rights, failure to bargain in good faith, and failure to abide by the terms of the collective bargaining agreement accepted by the union the preceding April. A hearing was held on June 28, 1994.

Fountain Valley Hospital has made a mockery of the NLRB process. Legal challenges and delays have been used at every step to deny professional employees of the hospital their right to engage in collective action. Complementing the delays, the hospital has waged a nonstop antiunion campaign for eight years and has violated NLRB orders with virtual impunity. ■

CROWN CORK AND SEAL ■ United Steelworkers of America (USWA)

SAN JUAN, PUERTO RICO

THE USWA has thirty-six union contracts with Crown Cork and Seal for plants in the United States and Canada, with a good bargaining relationship. Nonetheless, the company vigorously opposed USWA attempts to organize workers at its Puerto Rico facility in 1990-92.

Conditions at the Crown Cork and Seal plant in Puerto Rico were far below the standards at mainland United States and Canadian facilities. In a 1990 NLRB election the USWA lost to an independent union by three votes. The USWA protested the election based on the employer's assistance to the independent. Within a few months, the leaders of the independent union decided to support affiliation with the USWA.

In March 1991, with a clear majority signed to authorization cards, the USWA petitioned for a new election. The NLRB directed an election, but Crown Cork and Seal appealed, claiming that the independent union still represented the workers. While the appeal was pending, the company implemented an aggressive attack on the USWA. On the condition that workers retain the independent union, management offered pay increases, bonuses, extra vacation time, and improved insurance coverage. The company also made threats explicitly tied to legal delays.

A lengthy December 11, 1991 memo sent to each worker at home included the following in a "List of Facts" (translated from Spanish):

5. The company has prepared unfair labor practice charges for the NLRB.... The hearing can go before a judge at anytime in 1992. The judge can issue a decision between two and twelve months. Either party can appeal.... The Board can reasonably issue a decision between two months and two years. Either party can appeal.... It can reasonably take between six months and eighteen months for the Court of Appeals to issue a decision. Either party can appeal....
6. ...If there is an election and the Steelworkers win, the company would have the legal right to challenge.... The company would challenge the results.... This means that the company would nullify the need to negotiate with the USWA.
7. If the USWA does not like the company's refusal to negotiate it would have to file ULP charges—the company would appeal to the

"First, this outside union has filed charges against the company with the NLRB... The company is currently meeting with an NLRB investigator... Unfortunately, we have started on the road of a very, very long process. Our attorneys have advised us that generally the steps involve: an investigation, a possible trial, a possible appeal to an NLRB panel in Washington, DC, and even a possible appeal to a Federal Appellate Court. There is no way to know how long this process could go on, but many cases have lasted five, six, or seven years."

This message was distributed by BMP America to its employees during a campaign for union representation. It is remarkably similar to the one used by Crown, Cork and Seal in an attempt to discourage its employees from affiliating with the Steelworkers.

NLRB and the Court of Appeals. This process could take two years or more....

9. In a period of three years, the final salary offer that the company made [to the independent union] would have resulted in an additional \$6,240 for each employee....

In essence, the company blatantly admitted that it was using NLRB procedures to avoid dealing with the USWA, and it used a description of those procedures as antiunion propaganda. Faced with the company's threat to delay, the USWA chose not to rely on the NLRB. Instead coordinated campaign tactics were used to disrupt productivity at unionized Crown Cork and Seal facilities on the U.S. mainland. Responding to this pressure, the company ultimately chose to end its opposition and recognize the USWA as bargaining agent at the San Juan facility. Crown Cork and Seal's Puerto Rico employees won union representation and achieved notable improvements in wages and working conditions, but all gains came outside of NLRB procedures and in spite of the company's use of weaknesses in the law as part of its union avoidance propaganda. ■

DAYTON HUDSON'S DEPARTMENT STORE COMPANY ■

United Automobile Workers (UAW)

DEARBORN, PONTIAC, AND WESTLAND, MICHIGAN

IN FEBRUARY 1990 the UAW initiated an organizing campaign at Dayton Hudson's Detroit area department stores. The campaign was met by bitter employer opposition, with President Dennis Toffolo calling UAW officials cheaters and liars and proclaiming, "Hudson's is unequivocally opposed to unionization and will fight all such attempts." In spite of the company's rigid stance, there have been four NLRB elections at three stores.

The first election was held at the Westland Mall store in Westland, Michigan. The UAW won the May 11, 1990 vote by a 274 to 179 margin. According to activist Mary Flowers, the workers voted for independent representation because "We were tired of being treated like kindergartners. We had no dignity." Dayton Hudson's issued a statement: "We naturally wish this vote would have been otherwise, *but we respect the process*" (emphasis added). The company's respect for the process evidently included the right to appeal, because it challenged the election results before the NLRB. The NLRB found no merit in Dayton Hudson's objections and certified the union on December 26, 1990.

Although in the immediate aftermath of the vote Dayton Hudson's had promised to meet the union at the bargaining table once it was certified, the company recanted its promise and refused to bargain. Toffolo explained, "We're exercising our right to due process of law." This legal maneuver forced the UAW to file an unfair labor practice (ULP) charge. The NLRB agreed with the UAW and ordered Dayton Hudson's to bargain.

Rather than comply with the order, the company filed new challenges to the election, claiming to have discovered evidence that the union had forged authorization cards. The company did *not* suggest that the union had filed for an election with insufficient valid cards, but rather that the union had used the forged cards to create the appearance that the campaign had broad support in order to build momentum. To substantiate their claim they presented a signed statement from John Medgwick, a former union activist who had defected. The NLRB dismissed the charges without a hearing, noting that the company had produced no evidence that the alleged forged cards had been used to generate support for the union. Dayton Hudson's appealed the decision.

While the Westland Mall case was under appeal, the UAW filed for elections at two other stores. An election

was held at the Summit Mall store in Pontiac on October 12, 1990. The union lost 157-187 and filed ULP charges. After a hearing, the NLRB determined that Hudson's preelection conduct had prevented a fair election. The primary illegal actions involved giving employees benefits (including pay increases) in order to influence their votes, and threatening that the employees would lose their retirement benefits if the union won the election. On September 12, 1992, the NLRB reached a settlement agreement with Dayton Hudson's requiring a rerun election. After reevaluating its support at the store, the UAW decided that the two-year delay and the company's illegal conduct had taken its toll so it withdrew before the scheduled vote.

The other store where the UAW organized was at the Fairlane Town Center in Dearborn. The UAW won a narrow victory in an April 1991 vote. However, the election was challenged by the employer because (unbeknownst to the UAW) a worker who supported the union had kept a list of employees in her department to make sure that they voted. Such list-keeping may constitute a technical violation in some circumstances, and the election was overturned by the NLRB. A second vote was held on August 9, 1991, but was lost narrowly by the union.

The second Fairlane election was eventually overturned by the NLRB due to numerous employer ULPs. The violations included the same type of threats and promises Hudson's had used in the Summit Mall campaign, plus a host of more aggressive union-busting activities. Among the more blatant violations were following employees into restrooms, videotaping workers while they leafletted or spoke to union organizers, threatening physical harm to UAW organizers in front of employees, and monitoring phone calls.

Hudson's reached a settlement agreement and posted an NLRB notice at the Fairlane store, agreeing to "cease and desist" from twenty-two specific types of illegal behavior including all of those just mentioned. Other acts covered by the notice were threatening to close, soliciting employee grievances, and recruiting workers to serve on a vote-no committee and to organize opposition to the UAW. A third election was scheduled for October 30, 1992.

However, while the notice was posted Hudson's repeated the same type of behavior—intimidation, harass-

ment, threats, interrogation, and spying. In addition, when a union organizer would enter the store, he or she would be followed at close range by four or five managers, who would yell and make loud insulting comments. The election was cancelled, and on February 26, 1993 the NLRB issued a complaint detailing more than 100 separate violations. Included were actions by the president of Hudson's, store managers, department managers, human resource managers, and store security. Hudson's was charged with hiring a security firm to spy on employees.

Hudson's use of these aggressive tactics had the desired impact: workers interested in union representation became frustrated and lost hope. Leonard Militello, a salesman at the Fairlane Town Center store, noted that "Dayton Hudson's has threatened, bribed, harassed, and ridiculed UAW supporters at its store ever since it lost the election at Westland." Mary Flowers, a UAW member at Westland adds, "You just can't have a fair election when a company abuses its power the way Dayton Hudson's has."

Ironically, Hudson's president Dennis Toffolo attempted to deflect attention from the company's exploitation of the legal process by attacking the UAW. Using the alleged forgery of union authorization cards at Westland as a hook, Toffolo charged, "It is clear the UAW attempted to use the NLRB procedures to the detriment of the very people they were meant to protect." On another occasion he exhorted, "When any organization plays fast and loose with federal laws and commits fraudulent acts, it has to be an embarrassment to them when they get caught. The UAW owes Hudson's employees some answers."

Meanwhile, the appeal in the Westland Mall case was still pending before the Sixth Circuit Court. Hudson's had actually used the delays in the Westland case as one of its campaign themes at other stores. Hudson's claimed to its employees that the UAW's inability to force it to the bargaining table at Westland was evidence of the union's lack of power, in essence bragging about its ability to manipulate the legal process to frustrate workers' efforts to exercise bargaining rights.

The Sixth Circuit Court ordered the NLRB to hold a hearing on whether cards were forged at Westland and, if they were, what impact that had on the election. The



Mary Grab, President of the Westland Mall employees' local union, speaks at a rally outside Dayton Hudson's stockholders meeting in Minneapolis on May 27, 1992.

hearing was held January 18, 1994. The decision by Administrative Law Judge (ALJ) Marion Ladwig minced no words: "I find that the whole basis of the company's motion to reopen the record is grounded on fabricated evidence." Dayton Hudson's star witness Medgwick's testimony was described as "false," "not candid," and "conflicting." When his testimony contradicted the signed statement he made at the company's urging in 1991, he claimed he had been lying in the affidavit. The ALJ even discredited as a fabrication his claim to have lied.

The judge traced Medgwick's motivation for turning against the union in part to his concern that "women's rights were becoming more and more prevalent," and his frustration that "big ticket" employees (higher paid sales consultants such as himself) were losing control of the union. The ALJ also noted that before inventing his story of forged authorization cards, Medgwick had met and talked with Dayton Hudson's president Toffolo on several occasions, and that an \$8,055.79 deficit in his commission account had been erased by the company.

In an arrogant response to the decision, Toffolo conveniently forgot his exhortations that the UAW abide by NLRB procedures and the law and announced, "I'm not surprised because I never expected the NLRB to question their own electoral process.... As you know, the case regarding the Westland card forgery issue has been in the legal system for four years.... We will continue with our appeal." ■

Chosun Daily News ■**International Ladies' Garment Workers' Union (ILGWU)**

NEW YORK, NEW YORK



Workers at *Chosun Daily News* rally support after the editor responded to their efforts to form a union by instituting unilateral changes and discriminating against union advocates.

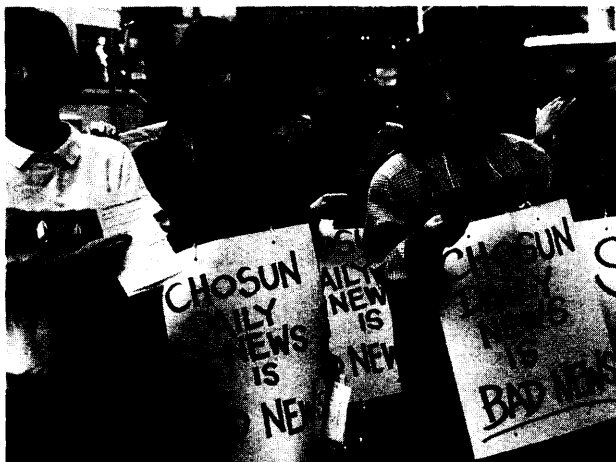
CHOSUN IL BO (*Chosun Daily News*) is a Korean-language newspaper published in New York City. The Professional and Clerical Employees (PACE), a division of the ILGWU, began an organizing drive in June 1989. PACE obtained signed authorization cards from fourteen of seventeen workers in a wall-to-wall unit, including the editorial, advertising, typesetting, and subscription departments. The workers demanded that their union be recognized on September 27 in a meeting with Kim Joong Kil, president of Chosun America, the publisher. Kim responded with a threat to close the newspaper, saying that the Korean headquarters, Chosun Korea, would consider "labor problems" as a reason to shut down the New York operation.

The next day Kim announced a new disciplinary policy, according to which workers would be fired for any two work rule infractions. He also changed the hours of work. A day later he announced a probationary policy and threatened to close down the paper because of "financial" problems. He also redressed a long-standing sore point: pay for those required to work three-and-one-half hours Saturday mornings was increased from \$10 cash to \$20.

Later, Kim called Sook Lyol Park and Eun Hee Park into his office. These two had emerged as leaders of the union organizing drive. Kim expressed his displeasure concerning their union activity, and he ordered both of them to report to work one-half hour earlier each day without extra pay.

The next week Kim called all the workers who had signed cards into his office individually. He threatened that unionization might lead the Korean headquarters to close the New York office. On the other hand, he suggested that if the workers rejected the ILGWU Chosun Korea might give increased support. He promised to institute medical insurance in the future if the workers rejected the union. He then asked each worker to sign a statement renouncing the ILGWU. Kim exchanged a signed promise of medical benefits for a signed agreement from one employee that she would withdraw her support for the union.

PACE lost the November 9 election by a 7-7 tie vote. The ILGWU filed multiple unfair labor practice (ULP) charges. The case was heard by an administrative law judge (ALJ) on July 2 and 3, 1990. Her decision was is-



These women lost their jobs when *Chosun Daily News* laid off workers in response to a campaign for independent representation.

sued January 31, 1991, and found for the union on all key charges. Based on the intensity of the antiunion campaign and the union's majority support for PACE when it filed for a representation election, the ALJ set aside the vote. She recommended that the union be certified and ordered Chosun America to bargain with the ILGWU.

The company appealed but the NLRB upheld the bargaining order on July 29, 1991. In a footnote included in its decision, the board pointed out that the bargaining order was especially appropriate given that Kim was still in charge of the operation and that three-quarters of the employees at the time of the organizing campaign still worked for Chosun America. By the time the NLRB issued its decision, this footnote was no longer accurate.

In October 1990 Chosun America had laid off eight workers, including all of the active unionists. Eventually, the company reduced its staff to two bargaining unit employees. The paper continued to be published using Chosun Korea employees temporarily assigned to Chosun America. In late summer 1991, approximately one month after the NLRB decision, *Chosun Il Bo* was sold by Chosun America to the Korean Channel, another Korean-language media firm. In the first edition under its direction, Korean Channel announced that it had been chosen by Chosun Korea to continue the paper. The

Korean Channel published the paper without interruption or substantive change. The "new" *Chosun Il Bo* had the same name, masthead, subscription list, vending machines, advertisers and equipment as the "old" *Chosun Il Bo*.

The "new" *Chosun Il Bo* immediately hired eighteen additional workers, increasing the number of bargaining unit positions to twenty. Two of the eight union activists who had been laid off the year before applied for jobs. Wan Mo Kang was interviewed by Cho Han Kang, the new managing editor. The two were acquainted, and Cho knew that Wan had been a reporter and a leader of the organizing drive at *Chosun Il Bo* two years earlier. He was not hired.

Chan Yong Jong, another former employee and union supporter, also applied for work. The president of the Korean Channel told Jong that he would not hire him "in order to prevent the union from claiming that the Korean Channel was a successor" to Chosun America. In other words, the Korean Channel was openly attempting to avoid any obligation to bargain with the ILGWU under the NLRB order.

The ILGWU filed ULP charges for the discharge of union supporters late in 1990, and the refusal to hire Wan and Chan in 1991, and sought a bargaining order for the Korean Channel as the successor employer.

An ALJ held hearings on May 11, 1992. Chosun America was found to have unlawfully laid off union supporters in 1990 and 1991, and back pay was awarded. However, the Korean Channel was exonerated of discrimination in its refusal to hire the two former union activists. Furthermore, because only two of the twenty workers at the "new" *Chosun Il Bo* had worked for the "old" *Chosun Il Bo*, the bargaining order was withdrawn—this although Chosun America admitted that it was a subsidiary of Chosun Korea and in spite of the fact that Chosun Korea had selected the Korean Channel to operate the "new" *Chosun Il Bo*.

In this case the employer openly violated the law when the workers at *Chosun Il Bo* decided to organize a union. Although the process was slow, the NLRB recognized the discriminatory behavior and ordered Chosun America to bargain. However, Chosun Korea was able to escape the impact of the NLRB decisions by reassigning the contract to publish *Chosun Il Bo* to what was either a different contractor or a subsidiary of the parent corporation. The successorship doctrine of the NLRB allowed the company to defeat the workers' attempt to organize without any effective recourse. ■

FLAGRANT VIOLATIONS OF THE LAW

Some employers are not content to work within the friendly confines of NLRB regulations. Instead they openly violate the law, most often by discriminating against the leaders of union organizing drives. Nearly half of the cases submitted to the IUD for this project included specific details of workers being disciplined, laid off, and fired for union activity. In most of them, the NLRB eventually ruled against the employer—but long after workers had already halted the organizing campaign out of fear.

These flagrant violations are all too common because penalties are so weak. Financial penalties usually are assessed only in cases of discharge or discriminatory denial of pay or benefit improvements. And the penalties are limited to the losses experienced by the workers involved. In the case of discharges, earnings from other jobs held in the interim are deducted from the award. In fact, most cases are resolved by settlement agreements which confer only a fraction of the amount due.

For violations less serious than discharges, the most common remedy for employer ULPs is a cease and desist order which must be posted in central locations on the company's property. Unfortunately, even if they post the decision as required, many employers simply ignore the order. In rare cases in which employer conduct is "egregious," a bargaining order may be issued even if the union loses the election. However, under federal court decisions, this is allowed only if the union can prove majority status prior to the violations.

As you will see, the cases in this section are examples of blatant disregard for both the rights of workers and the law.

POWER, INC. This British-owned company attempted to crush an organizing campaign by firing thirteen union supporters two weeks before the election. While the case awaited resolution before the NLRB, the company continued its hardball tactics by contracting out the jobs of union supporters, threatening years of legal delays, and vowing never to hire back the fired unionists.

DOMSEY TRADING CO. The excessive nature of this company's attacks on union workers is almost inconceivable. The case is replete with firings, obscene verbal insults, physical attacks, racism, and sexual harassment. In spite of decisions for the union at every stage, the NLRB is essentially powerless to deal with unbridled union busting such as displayed here.

FARRIS FASHIONS Another case in which the threat to close the plant was the centerpiece of the employer's union avoidance campaign, this one is particularly telling. Faced with a ruling that included a bargaining order, Farris's lawyers actually threatened the NLRB that if the board ruled against the company, the plant would close.

GRESS POULTRY In this case a union-busting consultant openly ran the employer's campaign, conducting captive audience meetings, delivering plant closing threats, and committing other labor law violations. The consultant was jointly charged with the company, and after seven years of appeals he was found guilty. His "penalty" was to post a notice in his consulting office, allowing all of his potential clients to witness firsthand just how anemic labor law is. ■

POWER, INC. ■ United Mine Workers of America (UMWA)

OSCEOLA MILLS, PENNSYLVANIA

ON DECEMBER 13, 1988, the UMWA was contacted by John Acey, Jr., an employee of Power, Inc. Power is an Osceola Mills, Pennsylvania, surface-mining operation owned by Ryan International of Great Britain. On December 22, Acey and three other workers met with a UMWA representative and decided to start an organizing drive. An election petition was filed on January 6, 1989, with the support of forty-eight workers among the seventy-four employed by Power.

The company's reaction was swift and furious. Supervisors William Bratton and Pete Prohaska warned workers in one-on-one discussions that the operation would close if the union was successful. General Foreman Larry Dipko went a step further, identifying the leaders of the organizing drive by name to other employees and threatening to fire the "troublemakers." On March 10, 1989, thirteen days before the election, the company laid off thirteen workers, all of them open supporters of union representation including John Acey, Jr., and the other leaders of the organizing campaign.

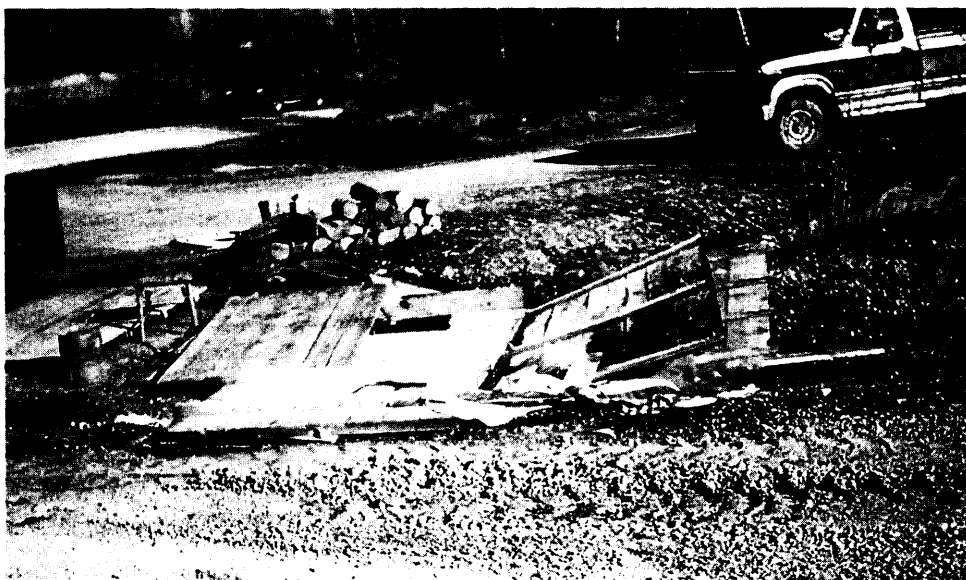
Chris Hotson, the chairman of Ryan's board of directors, flew in from England and held captive audience meetings on March 21. Hotson told the workers that 20 percent of Ryan's mines in Great Britain were unionized, and that he had shut down one of the mines when he could not reach an agreement with the union. He explicitly repeated the threats to close Power, saying that eventually any union would put a company out of business. Hotson referred to the laid-off employees as "past history," and he claimed that they had planned to lead the workers out on strike.

The vote at the March 23 election was 27 yes and 30 no, with the 13 ballots of the laid-off workers unopened because they were challenged by the employer. The union filed unfair labor practice (ULP) charges based on the company's closing threats and the layoffs of the thirteen union activists.

While the UMWA and the workers waited for the NLRB to schedule a hearing, the company continued its antiunion attacks. In September Frederick Bosch, the attorney for Power, held small group meetings and informed employees that any adverse NLRB decisions would be appealed, stating that "it is going to be a long drawn out affair" that could take three to four years. He warned that anyone who helped the thirteen laid-off workers would be fired and proclaimed that "the fucking thirteen guys ain't coming back." He also said that any-



This shed was the outpost for Power workers when they struck in response to numerous unfair labor practices during the winter of 1989-90.



The workers' shed was flattened by Power's bulldozer.

one going on strike would be replaced even if it were an unfair labor practice strike. The UMWA filed additional ULP charges which were consolidated with the prior charges and the challenged ballot issue.

Meanwhile, on December 8, 1989, Power laid off six more workers (all known union supporters) and contracted out their work. The UMWA called for an unfair labor practice strike on December 8, 1989, which received modest support from the workers. Over the next several months the strikers individually or in pairs offered to return to work unconditionally—four of them were refused. In November 1990, the company contracted out more work and laid off two additional known union advocates.

As new ULPs piled up, they were appended to the previous case. All of this delayed decisions on the challenged ballots and the prior charges. An administrative law judge's (ALJ) decision was finally issued on May 6, 1992. The company was found guilty of most of the ULP charges, including the discriminatory layoffs, the threats, and the unilateral contracting out of work. On the challenged ballots, the thirteen ballots from the laid-off employees were declared valid. The company appealed.

The NLRB issued its decision on the appeal on May 28, 1993, upholding the ALJ decision on all substantive points. Back pay was ordered for the workers fired for

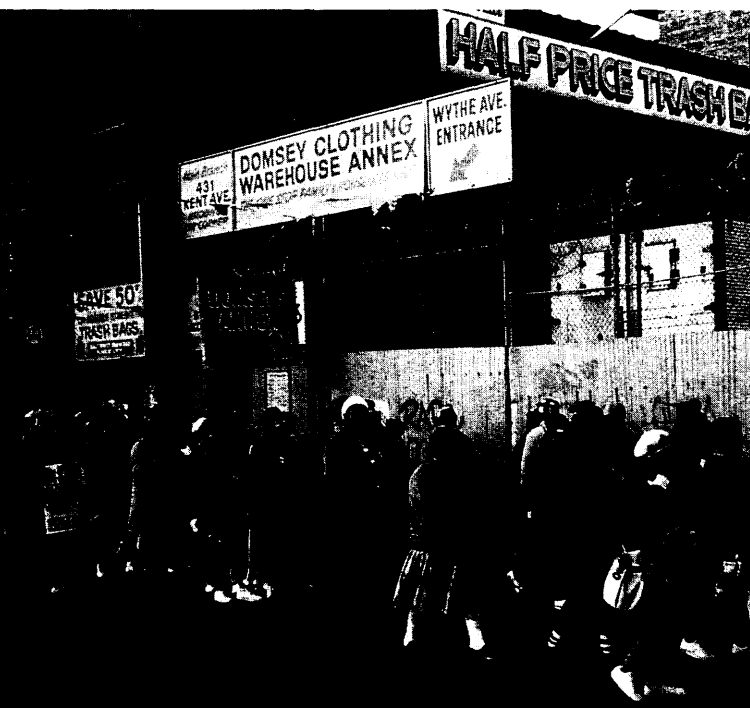
union activity and is estimated to exceed \$3 million. The thirteen challenged ballots finally were opened on June 22, more than four years after they were cast. As expected all were for the union, and the final vote stood at 40 yes, 30 no. Power appealed the decision to the D.C. Court of Appeals. The case has been scheduled for October 7, 1994, with a decision expected early in 1995.

Power, Inc. and its British parent, Ryan International, have openly violated the law. The union has won on almost every ULP charge it has filed, and yet it will be more than six years from the time when 65 percent of the workers signed petitions supporting the UMWA before the case is resolved. Even then, the company will have a variety of options to avoid responsibility, ranging from bankruptcy to evasive bargaining.

John Acey, Jr., lost his job, as did his father and his brother. All of the union activists have been denied employment at other mines in the nonunion Shannon Valley area where they live. Acey reports, "It's been hard to find steady work. A lot of the guys have had to live away from home, sometimes out of state, picking up construction and other jobs which pay a lot less than before.... They're supposed to have this National Labor Relations Act to protect you, but it's just words—no bite. After five years we're still out here waiting for a final decision. The law doesn't work. It has to have a complete overhaul." ■

DOMSEY TRADING CORP. ■ International Ladies' Garment Workers' Union (ILGWU)

BROOKLYN, NEW YORK



Domsey workers protest firings of the four leaders of their campaign for independent representation.

DOMSEY TRADING CORP. buys used clothing donated to organizations such as the Salvation Army and exports the clothes to Third World countries. The company exports 5 million pounds of clothes per month, and reports gross annual sales of \$15 million. Its employees are mostly Haitian and Latin American immigrants.

In September 1989 a Domsey worker contacted the ILGWU and asked for assistance in organizing a union. Her description of working conditions shocked organizer Joe Blount: "It sounded like a slave camp." Each Domsey worker was assigned a number and wore a tag pinned to his or her shirt with the number on it. Supervisors referred to them by the number rather than using names, such as "Twenty-two, have you seen thirty-five?" Women workers were allowed to go to the bathroom only if they had a pass, and one pass had to be shared among the nearly two hundred women. A *Newsday* reporter who visited Domsey in 1990 described "unsanitary conditions" in the women's bathroom, including, "dirty, encrusted toilet bowls, with no toilet paper, soap or hand towels to be found."

An ILGWU organizational meeting on October 26, 1989, attracted one hundred workers. The next day, supervisors assigned two dozen workers to more difficult tasks because they had gone to the union meeting. Giles Robinson, an employee for twenty-seven years who had attended the union meeting, was approached by plant manager Peter Salm. Salm started an argument and then told Robinson, "Don't raise your voice at me because I'll throw you right out on your ass."

On December 1 Joe Blount came to Domsey to request recognition for the ILGWU. Seventy-six percent of employees had signed cards in a unit of 243. Giles Robinson informed Peter Salm that the union was there to see him. Fifteen minutes later Robinson was fired. Salm told him, "We're having trouble with the union and we've decided to let you go...because you're instigating the problem." That afternoon, the employer's attorney told the union's attorney that he was not worried, because even if Domsey had to reinstate Robinson, the back pay liability would not amount to much.

By late January Domsey fired three more members of the union organizing committee—Lucien Henry, Ann Dormeville, and James Charles. From January 30 to August 31, 1990, union supporters struck Domsey because of the illegal firings. At the start of the strike 90 percent of the

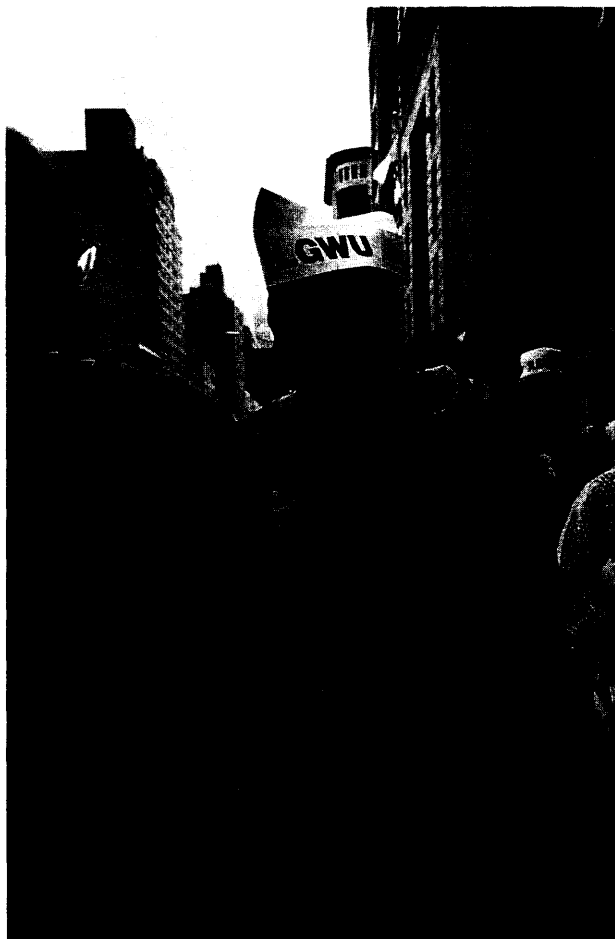
employees walked out. Almost immediately Domsey began hiring replacement workers—mostly Dominican immigrants, apparently to exploit the historic animosity between Dominicans and Haitians.

During the strike, management representatives subjected the predominantly Haitian striking workers and union organizers to outrageous harassment. Peter Salm placed a “voodoo table” covered with a black tablecloth in front of picketing workers, placed candles and bananas on the table, and called to the workers, “This is for you monkeys to eat.” He and his associates called picketing women “whores,” simulated sex acts with a dildo, and shouted explicit obscenities at them. They called pickets “lazy” and “stupid niggers.” They told picketers that they were being sprayed with water to wash off their smells and their AIDS.

Peter Salm also directed his venom toward ILGWU organizer Natalie Mercado. He spat on her car, and several times asked her how many men she “fucked” the night before and how much money she made. On one occasion he threw a brick at her car; part of it broke off and struck the side of her head, giving her headaches, bloodshot eyes, and ringing ears.

On August 10, 1990, the 132 remaining striking workers unconditionally requested to return to work. Domsey refused to rehire some of them and delayed the return of the others for several weeks. Once reinstated employees suffered severe abuse, including physical attacks and verbal harassment. Sam Padgett played a particularly repugnant role and was later compared by a NLRB official to Attila the Hun. As strikers returned to work, Padgett would be assigned to work near them. While standing across the conveyor belt from Marie Rose Joseph on her first day back, Padgett spat on her and cursed at her incessantly. When Antoinette Romain was assigned to work with Padgett, he yelled “mother-fucker” at her and hurled bundles of coats four to five feet in diameter in her direction. One hit her in the back and she was taken away in an ambulance.

Peter Salm joined Padgett in some of his excesses. When Marie Nicole Mathieu returned to work, Peter told her she smelled and spat in her face. When she left work that day she was followed to the bus stop by Padgett, who pushed her into a car and punched her in the face. She was hospitalized because of the injuries caused by the attack, then fired for not reporting to



Giles Robinson, an employee for twenty-seven years, was fired for his involvement in Domsey workers' efforts to organize a union.



Domsey workers' attempts to seek an independent voice through a "real union" was crushed by the company.

work the next day. When Dieuleneuve Zama was reinstated, Peter confronted him at the water fountain and asked him what his number was. When Zama gave him his name instead, he was immediately fired. In addition to Mathieu and Zama, ten other returning strikers were arbitrarily fired. Many others quit in fear and disgust.

An NLRB administrative law judge (ALJ) conducted hearings on the Domsey case and on November 2, 1991, issued a lengthy decision detailing the company's multiple violations of the law. Three months prior to the release of the decision the NLRB had taken the unusual step of securing a federal court injunction ordering Domsey to cease its unfair labor practices (ULP). The ALJ ordered Domsey to reinstate fifteen workers with back pay, and to compensate in varying amounts an additional two hundred workers for delays in reinstatement or benefits withheld. In addition, Peter Salm would be required to read a cease and desist order before the assembled employees of Domsey. While fighting the federal court injunction, Domsey also appealed the ALJ decision.

On March 27, 1992, the ILGWU lost a representation election at Domsey 170 to 120. Only 87 of the original strikers were on the payroll, while 150 replacement workers hired during the ULP strike voted. On August 1, 1992, the NLRB overturned the election because of the employer's multiple ULPs. This board decision is currently on appeal to the U.S. Court of Appeals in New York. On July 30, 1992, the federal court found Domsey in contempt of its earlier injunction ordering the company to cease its ULPs. Domsey appealed this decision as well.

In the final piece of the legal morass, on March 23, 1993, the NLRB upheld the 1991 ALJ decision. In the ultimate irony, the NLRB decision was devoted primarily to a defense of the ALJ order that Peter Salm read the cease and desist notice and admit labor law violations to the assembled employees of Domsey. It seems that a prior Federal Appeals Court decision had found that such a requirement could be humiliating. Thus, the NLRB had to explain, "We do not impose this remedy for punitive reasons."

As of July 1994, a final resolution of Domsey's appeals had still not been reached. Regardless of the outcome, there are no adequate penalties under current law to address Domsey's blatant and disgusting disregard both for the law and for human decency. It is incredible that a slap on the wrist such as the requirement that Salm read the cease and desist order is viewed as an extreme measure that requires a carefully reasoned explanation by the NLRB. ■

FARRIS FASHIONS ■ Amalgamated Clothing and Textile Workers Union (ACTWU)

BRINKLEY AND HAZEN, ARKANSAS

FARRIS FASHIONS is a successful sewing company that sells almost exclusively to Wal-Mart. Most members of the work force are women, a majority are African-American. Few workers are able to earn \$5 per hour under the company's piece rate system. The company provides no medical insurance for its employees.

ACTWU began organizing at Farris in October 1990 and attained majority support on representation cards before filing for an election on October 23. ACTWU subsequently lost an NLRB-conducted election by a vote of 202 to 60 on December 14, 1990. The defeat resulted from a systematic and comprehensive company campaign that relied on repeated threats of plant closure, harassment, and interrogation of workers during the preelection period, and illegal layoffs of two key union supporters after the election.

The threats of plant closure began in October when owner Farris Burroughs told employees during a captive audience speech, "if you don't quit messing with the union, I will close the plant down, turn it into a chicken coop and sell manure."

In a subsequent speech Burroughs told employees that Wal-Mart owner Sam Walton would pull his contract if the union did not stop messing with him (Burroughs): "Walton doesn't buy union-made goods or deal with union plants."

Just twenty-four hours before the election, Burroughs read a speech to his employees which said, in part, "All I want to do is make it *perfectly* clear that if this union is voted in, I have the absolute right to close these plants down and there is nothing the union can do to stop me." Supervisors were used throughout the campaign to reinforce the plant closing threats on the factory floor.

Burroughs's campaign to scare workers with the threat of eliminating their jobs was buttressed by support from elected officials and the local news media. Burroughs arranged for Steve Elledge, a local judge, to review the company's financial records and to answer questions about finances in an employee meeting. During the meeting Burroughs publicly asked Elledge if he could afford to close the plant. Elledge confirmed that he could. At Burroughs's suggestion, Brinkley's mayor Johnny Deen told a number of Farris Fashions employees one-on-one, "You guys don't want to lose your jobs. You need your job more than you need anything else."

NOTICE!!!

On December 3, 1990, the people of Brinkley are expecting an earthquake. The scientist says we have a 50/50 chance of a major earthquake. Brinkley citizens are getting prepared.

On December 14, 1990, the people of Farris Fashions are going to have an election to decide whether to accept a union or not. This union has a 50/50 chance of getting in. Are employees of Farris Fashions prepared?

(1) Are Brinkley citizens prepared?
(2) Can Brinkley take the effects of 315 people being out of work. Remember when Howard Industries and Van Heusen closed at the same time?

(3) Can Farris Fashions afford to pay major medical insurance for 315 people? The amount per year would equal the sum of \$567,000.00.

(4) If Farris Fashions employees get insurance, more money, and better benefits, are the flannel shirts we make worth more money to Wal-Mart? The question is not if Wal-Mart can afford more; but is our product worth more money? Wal-Mart can make the same shirts that we do overseas for about 70% per dozen less. How far will Wal-Mart go to get their product "made in America?"

(5) Do you, as a Wal-Mart customer, want to pay more than \$6 for these flannel shirts?

(6) Is it fair that the owner of Farris Fashions make a paycheck a less than \$12 per hour? This man works about 16 hours per day. Does the owner sit up in a big fine office all day? Would you pay yourself the same amount if you were him? Or would you sit in a big, fine office?

Before we possibly have two disasters in Brinkley, ask questions, get facts, and VOTE NO! Ask Farris to let you see his books on the factory! Go to Clarendon to the courthouse! Ask to see what Farris owes on the building. Look to see what he owes on the machinery. Ask him what he pays per month incentive pay. Ask him what he pays on holiday pay. Ask questions! VOTE NO ON DECEMBER 14, 1990.

One final date to remember—Christmas is on December 25, 1990. Most people hang stockings by the chimney with care—in our stocking, we might find an unemployment card. Wrapped up under your nice pretty tree, might be our 'Union Card.'

**We say that would make three disasters!
VOTE NO!**

Sincerely,

Employees of Farris Fashions

The Farris Fashions "Vote No" committee distributed this flyer, echoing the company's warning that a vote for union representation would cause the factory to close.

"WE SAY YES!"

Denise Tyler

I'm voting union because
I want a better life
for myself and my
children. I am not
scared by the company's
threats — I'm voting
yes for our future.

Kay Vandergriff

All this money
spent on lawyers
and scare tactics
could have gone
to make things
better for us.
I'm not scared —
I'm voting yes!

Odessie Miller

I'm voting yes for
affordable insurance &
some fair work rules.
I've been here since
Farris opened and I
know Farris can afford
to treat us better. I'm
voting yes!

"NO MORE FEAR"

Supporters of independent representation
at Farris explain why they are voting yes.

Three days before the election, Mayor Deen called a special meeting of the Brinkley Board of Directors to discuss the situation at Farris Fashions. The board specifically addressed the possibility that Farris would close if the workers voted to unionize, and the city attorney stated that Burroughs had the legal right to close for any reason. The mayor explained that Burroughs could not afford better health insurance, and he stressed the need to keep costs down in order to hold on to the Wal-Mart contract. The meeting ended with Mayor Deen emphasizing, "We want to be pro jobs," and with an agreement to set up a committee to work with employees and employers as an alternative to unionization.

The special meeting of the Brinkley Board of Directors was covered in detail in the local paper, the *Brinkley Argus*, on December 12 under the front page headline "Board of Directors Meet—Discuss Union/Job Crisis." On the same day a local Brinkley radio station began broadcasting a report that Farris Fashions would "close operations if the union is voted in." The story ran with each news broadcast until sometime after 9:00 a.m. on election day, December 14.

After losing the election, the union filed unfair labor practice (ULP) charges based primarily on the company's all-out campaign to convince workers that voting for the union would inevitably mean plant closure. In an administrative law judge (ALJ) hearing, ACTWU established that a clear majority of Farris Fashion employees had signed union representation cards prior to the election. The union argued that the illegal tactics used by the employer destroyed the union majority. In a decision issued July 2, 1992, ALJ Elbert Gadshen agreed. He found Farris guilty of multiple ULPs and concluded that the repeated plant closing threats were so pervasive and such serious violations that it would be impossible to conduct a fair rerun election. Thus, rather than order a second vote he recommended that the union be certified based on the signed cards, and he issued a bargaining order.

Farris appealed the decision to the NLRB. Perhaps the most chilling aspect of this situation is that Burroughs, through his attorney, subsequently threatened the NLRB with plant closure. In its post-trial brief the Farris attorneys warned against a bargaining order: "Not only is such a drastic remedy unwarranted, it would be a disaster for Farris Fashions' employees and the Brinkley, Arkansas area, because Farris Fashions will close if it ultimately has to bargain with the union. This is a fact that the union and NLRB should not doubt." On September 30, 1993, the NLRB ignored the company's threat, and issued a bargaining order. Farris appealed to the U.S. Court of Appeals. A decision had not been reached as of July 1994. ■

Gress Poultry ■ United Food and Commercial Workers (UFCW)

SCRANTON, PENNSYLVANIA

THE UFCW conducted an organizing campaign among 250 workers at Gress Poultry in 1986. Half of the workers were immigrants from Latin America, India, Cambodia, Laos, and Vietnam. In spite of the challenge of communicating in seven different languages, the union was able to secure signed union authorization cards from nearly 70 percent of the employees. An election was scheduled for December 23, 1986.

Gress hired antiunion consultant Rayford Blankenship to help it defeat the UFCW. Blankenship and his associate Richard Buntele held a series of three captive audience meetings for each of the three shifts—the first meetings in early December, the second around ten days before the election, and the final meetings the day before the election. The theme at these meetings was straightforward—if the union won the plant would be closed. Union supporter Charles Sears recalls that at one meeting, “Buntele claimed that if the union got in Gress would lock the place up and retire.” According to Barbara Teddick, also a Gress worker, at another meeting Buntele said that Jim Gress’s wife was sick and that Jim Gress didn’t have to negotiate with the workers because he would move to a warmer climate to be with his wife.

For his part, Blankenship told the employees about one of his clients who had lost an election and padlocked the plant. To make sure that his speech was understood by the multilingual audience, he held up a huge padlock for everyone to see. During the preelection period the company reinforced Blankenship’s message on two occasions by sending more than fifty suspected union supporters home two hours early.

The campaign continued on election day, as Blankenship held a picture of a lock and key, and told employees that the employer had given him a padlock to lock the door when he closed the plant down. In addition to the threats, Blankenship took photographs of employees talking to union organizers, took a “vote yes” sign from an organizer’s car and ripped it up, and verbally attacked and insulted a union organizer in front of a group of employees.

After losing the election 114 to 71 with 38 challenged ballots, the union filed objections and unfair labor practice (ULP) charges. Because Blankenship had actually delivered threats himself (most consultants stay in the

background), he was charged jointly along with the employer. Before an administrative law judge (ALJ) the company admitted hiring consultant Blankenship to “run an antiorganizing campaign.” Vice President Glenn Gress (son of the owner) explained that the union resistance effort featured “all the propaganda” and “your normal antiorganizing campaign slogans.” The case inched its way through the NLRB process with decisions for the union at every step. The NLRB even issued a complaint seeking a bargaining order based on the card check majority, because the Gresses and their agent Blankenship had so tainted the election process.

The company and the consultant appealed each decision. Ultimately the UFCW decided to give up on the bargaining order and reached a settlement agreement with Gress on January 18, 1989. The agreement called for Gress Poultry to make payments totalling over \$13,000 to employees subjected to discriminatory treatment during the campaign, and to the UFCW. The company did not admit to any labor law violations, but did agree to an expedited rerun election. The second election was held on April 7, 1989, and the union lost once again 71-38 with 30 challenged ballots.

However, the Gress Poultry story was not yet complete. It seems that for consultant Rayford Blankenship labor law violations such as those at Gress Poultry were integral to his success as a union buster. As the NLRB noted, “For more than a decade, Blankenship’s name has come before the board as an agent who has committed repeated unlawful acts on behalf of the employer/clients who hired him. Respondent’s pattern or practice of violations include: unlawful threats of loss of work or plant closing, unlawful undermining of support for a union by urging employees to bargain directly with the employer, overall bad-faith bargaining, locking out employees while engaging in bad-faith bargaining, and unlawful solicitation of grievances and promise of benefits.” In light of this previous behavior, the NLRB decided to join with the UFCW and continued to pursue the case against Blankenship.

On July 18, 1990, an administrative law judge found that Blankenship had committed five ULPs during the period of the 1986 election. He issued a cease and desist order and a requirement that Blankenship post the order

FORM NLRB-4727
(2-89)

NOTICE TO EMPLOYEES



POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
AN AGENCY OF THE UNITED STATES GOVERNMENT

D-1005

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice when we are acting as an agent for any employer subject to the jurisdiction of the National Labor Relations Board.

WE WILL NOT threaten employees with plant closure and more difficult working conditions.

WE WILL NOT tell employees that Gress Poultry will not deal with the employees on a union negotiating committee if a union comes into the plant.

WE WILL NOT remove pronoun or "Vote Yes" signs from automobiles belonging to employees or union organizers.

WE WILL NOT take pictures of employees.

WE WILL NOT in-

by, or coerce
the Act.

ATES.
ANKENSHIP

(Title)

United States Government
NATIONAL LABOR RELATIONS BOARD
Region 4
615 Chestnut Street - 7th Floor
Philadelphia, PA 19106-4404

September 8, 1993

Rayford T. Blankenship
Blankenship & Associates, Inc.
540 North Madison Avenue
P.O. Box 306
Greenwood, IN 46142

Re: Blankenship & Associates, Inc. and
Rayford T. Blankenship
Case 4-CH-16001-2

Dear Mr. Blankenship:

On March 31, 1992, the National Labor Relations Board issued its Decision and Order in the subject unfair labor practice case requiring the respondents, inter alia, to post a Notice to Employees at their Greenwood, Indiana offices in conspicuous places, including all places where notices to employees are customarily posted. On July 15, 1993, the U.S. Court of Appeals for the Seventh Circuit enforced the Board's Order.

This is to inform you that I have recommended to the General Counsel that respondents' failure to comply with the Notice posting provision of the judgment of the Court of Appeals. You have submitted a certification of the posting, which you signed, indicating that the Notice has been posted "on the side of our employees' toilet," and you subsequently confirmed that information to the Compliance Officer at our Indianapolis Regional Office.

In the event that you reverse your present position on compliance, and are prepared to post the Notice as required by the Court Judgment, please advise Compliance Supervisor Burdholder promptly to avoid further legal proceedings and to ensure that compliance is carried out properly.

Very truly yours,

Peter W. Hirsch
PETER W. HIRSCH
Regional Director

conspicuously in his offices in Greenwood, Indiana. Blankenship appealed to the NLRB. Nearly two years later on March 31, 1992, the NLRB noted Blankenship's ten-year record of labor law violations and upheld the ALJ decision. Blankenship appealed.

On July 15, 1993, the U.S. Court of Appeals enforced the NLRB order. In perhaps the ultimate statement at-testing to the enforcement power of the NLRB, Blankenship officially informed the board that the notice had been posted "on the seat of our employees' toilet." On September 8, 1993, the NLRB initiated civil contempt proceedings.

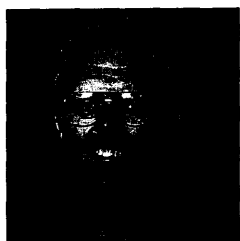
Although the continuing saga of Rayford Blankenship has vindicated the UFCW organizers who worked on the Gress Poultry campaign, there is little satisfaction in this sad experience. The owners of the company admittedly contracted the services of a known labor law violator with the sole objective of defeating the efforts of their employees to organize a union. The Gresses succeeded, and their only "penalty" was a modest settlement agreement that allowed them to proclaim their innocence.

For his part, Rayford Blankenship pushed the NLRB process to the limit and his punishment was to post a notice in his office for all his potential clients to see. Not content with this slap on the wrist, he chose to insult the NLRB and was rewarded with free publicity for his union-busting services when the story was reported in the national press.

Michele Kessler, a UFCW organizer who worked on the Gress campaign, aptly generalizes from the experience: "If an employer excessively breaks the law and continues to appeal, that employer can remain union-free. Over my seven years and one day I've been an organizer with UFCW I've seen many examples of campaigns killed by firings, and the law violated to intimidate. The system just takes too damn long to do anything, and once it does all we get is a notice—no teeth!!!" ■

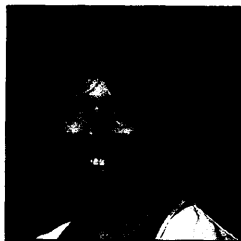
Seven years after conducting an illegal campaign to stop workers from organizing a union at Gress Poultry, Rayford Blankenship's punishment was to post a notice in his consulting office. Not content to accept this slap on the wrist, Blankenship thumbed his nose at the NLRB and posted the notice on his employees' toilet.

"EMPLOYEE INVOLVEMENT" AS UNION AVOIDANCE



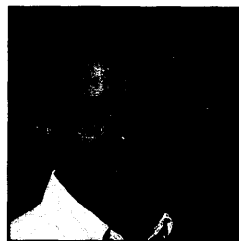
DOUG OAKS •

I want NCR to be a successful business. Yet, only if employees are treated fairly can we be successful in the future.



MARK REDMON •

As a younger employee, I am concerned about the future. We need the right to organize to improve our conditions at work.



RON WEEKLY •

I serve on our district and region Satisfaction Council. I know from personal experience that our only chance to achieve parity in benefits, pensions, wages, and the right to organize is through NANE/CWA.



JACK SLATTEN •

In my 37 years at NCR, I have noticed the company grow less concerned about our needs and problems. We need a union in order to be treated fairly.

When these workers joined with other field engineers to form the National Association of NCR Employees, the company established "Satisfaction Councils." These councils solicit employee concerns, but ultimate authority rests with the National Council composed entirely of NCR managers.

The debate on labor law reform as framed by the Clinton administration includes certain troubling ambiguities. In particular, the focus on productivity and cooperation between labor and management leaves open the question of how much priority should be assigned to the right of workers to independent representation. The Dunlop commission has devoted considerable attention to alternative forms of work organization such as quality control circles and team-based production, and it has concluded that such systems can work effectively and provide workers with "voice" in both union and nonunion settings. The commission also has viewed favorably various alternative dispute resolution systems, including in-house grievance procedures in nonunion companies.

While the Dunlop commission and Clinton administration are developing labor law reform proposals, employers are applying significant political pressure on their allies in Congress to relax the Wagner Act restrictions on employer-dominated labor organizations. Employers argue that these restrictions were enacted to prevent company unions but now limit nonunion experiments with various forms of employee involvement.

Without dealing in detail with either the Dunlop commission's interest in alternative forms of work organization or the employer community's parallel campaign to amend the Wagner Act, we feel that it is essential to address this issue in the context of workers' organizing campaigns. In many of the cases collected by the IUD, the employer used some form of employee involvement or in-house grievance procedure as an integral part of a union avoidance package. The adaptability of these programs to union-busting purposes should not be underestimated.

In some cases employers use employee involvement or a grievance procedure as part of a "union free" policy, which is implemented company-wide to discourage unionization before it gains a foothold. Even more blatant in terms of their union-busting intent are programs implemented in direct response to workers organizing. For example, in one case an employer established "satisfaction councils" throughout the corporation after a union initiated a nationwide organizing campaign. In another case the employer set up "action committees" in response to complaints while workers were simultaneously approaching a union for organizing assistance.

"Management never wanted to listen to us before, so people were suspicious when all of a sudden they said they did."

DIANE VERRETTE Electromation worker

"This participation program was a way for the company to pretend to be on the side of the workers while making sure we had no protection and no voice."

VERNA PRICE Chief Steward

...the workers filed for a second election to become Teamsters when the government agreed that the management-dominated "cooperation" committees violated federal labor law.

The New Teamsters, April/May 1994

These comments from workers at Electromation in Elkhart, Indiana, refer to the company's "action committees," established in response to a petition protesting unilateral changes in pay and personnel policies. While the company determined who would serve on the action committees and what issues they could explore, the workers formed their own independent organization. The NLRB eventually ruled that the action committee structure constituted an illegal management-dominated labor organization.

In a third case the employer introduced "task teams" in a factory in direct reaction to an organizing campaign and asked workers to support the teams as an alternative to unionization.

The common thread is that the employer has the last word in these systems which give the appearance of a legitimate voice for workers. They are established *not* to solicit workers' concerns, but to forestall workers' efforts to seek independent representation. At their best they tap workers' knowledge in order to improve productivity and quality. At their worst (and often simultaneously) they are a cynical token response to the workers' frustration which has led to a union organizing campaign.

In this section we present three cases. One tells of an employer-controlled grievance system introduced days before an NLRB election. Another reports on an elected grievance committee created immediately after the start of a union organizing drive. The third concerns an employee involvement system that was presented as a natural outgrowth of the company's system of workplace organization, but was not announced until after workers started to organize. All three programs were central to the company's union-busting game plan.

FLAMINGO HILTON The company's aggressive anti-union campaign included all of the standard ingredients: captive audience meetings, attacks on the union, threats of job loss, warnings that negotiations would not bring improvements, etc. A key feature of the company's strategy was to announce a new "complaint resolution system" to be implemented after the NLRB election if the union lost.

ELECTRONIC BANKING SYSTEM The day after a union meeting to kick off an organizing campaign, the employer held a captive audience meeting and required workers to elect a grievance committee. This was the opening volley in a union-busting effort that included surveillance cameras, open discrimination against union supporters, and a "vote no" committee set up by the employer.

KMART Prior to the start of union organizing, the company had assigned workers into groups, appointed group leaders, and began to refer to employees as "associates." When organizing began the employer responded with an Associates Relations Committee, an Employee Involvement Committee, and a Vote No Committee. ■

FLAMINGO HILTON ■
United Steelworkers of America (USWA)
 LAUGHLIN, NEVADA



ELECTION INFORMATION

IF THE UNION CALLS A STRIKE
 TO TRY TO FORCE THE
 COMPANY TO AGREE TO THE
 UNION'S CONTRACT DEMANDS,
 WHAT CAN THE
 COMPANY DO....?

FACT:
 THE COMPANY IS FREE TO HIRE
 PERMANENT REPLACEMENTS
 FOR ECONOMIC STRIKERS
 SO THAT IT CAN
 CONTINUE TO OPERATE
 This means that after the strike is over
**YOU COULD NO
 LONGER
 HAVE A JOB.**

This memo distributed by the Flamingo Hilton during a campaign by its workers to form a union is representative of the employer's intimidation campaign. It contrasts sharply with the Flamingo's promise of fair treatment via a new complaint resolution policy described as "better than a grievance procedure under a union."

THE FLAMINGO HILTON is a hotel-casino in Laughlin, Nevada. The USWA attempted to organize nearly one thousand employees at the Hilton in the summer of 1993. During the campaign over 75 percent of the workers signed union authorization cards, yet the USWA lost the July 6, 1993 election by a vote of 389 to 495.

Management was able to thwart the organizing effort by launching an aggressive antiunion campaign. Hilton held a series of captive audience meetings at which top management threatened reprisal if the union won and promised future benefits if the union lost. At one captive audience meeting, the workers were shown a film depicting violence taken out of context from a USWA strike at the Phelps-Dodge mining company ten years earlier.

The most direct threats were delivered in one-on-one and small group meetings among Latino kitchen employees. These workers were explicitly threatened with job loss, and there were innuendos about reporting workers to the Immigration and Naturalization Service for possible deportation.

The company's campaign also included a stream of handbills distributed at the workplace and individually addressed letters. Particularly important was a memo dated June 22, 1993, announcing the establishment of a "complaint resolution policy at the Flamingo Hilton-Laughlin similar to the one we have at the [nonunion] Reno Hilton." The memo described the policy as follows:

Under our policy, any non-probationary employee who believes that he or she has not been treated properly at work can file a complaint which will be resolved by a group of fellow employees and managers. This procedure is much better than a grievance procedure under a union. It is much quicker and you will be able to represent yourself. If you have any questions about our new policy, your supervisor has a copy and is available to go over the procedures with you.

The policy was to take effect on August 1, 1993, three weeks after the representation election.

A look at the details of the complaint resolution policy exposes its limitations. At step one, the worker presents the complaint to his or her immediate supervisor. At step two, the worker explains the problem to a

member of management from the human resources department. Appeals to step three are permitted only in cases involving a written warning, suspension, or termination. The appeal is heard by a five-member panel—two employees selected at random and three representatives of upper management. The policy states explicitly that the panel's decision is "final and binding on the employee and the Flamingo Hilton-Laughlin." Furthermore, the worker filing the complaint is required to pursue the case totally on his or her own with "no outside representation allowed...at any step of the procedure."

The promised complaint resolution policy is clearly dominated by the employer. Decisions at every stage of the process are made by a member of management or by a board with majority representation from management. The worker has no rights to representation, or even to influence membership on the appeals panel; the appeals panel itself is even limited by existing in-house human resource management regulations—"it can only interpret written policy and rules." More important than its limitations, however, is how the policy was used in the Flamingo Hilton's antiunion campaign. The new policy was announced two weeks before the NLRB election and described as a superior alternative to a union grievance procedure. The details of the policy were shared with workers only if they asked for explanations from their supervisors.

The spirit in which the complaint resolution policy was introduced is best reflected by the other components of the Flamingo Hilton's union avoidance campaign. Among the antiunion materials distributed by the Hilton were handbills and letters on weak NLRB laws, concession bargaining, and replacement workers. In one handbill the company described "What really happens in negotiations" based on specific NLRB cases: "The law does not prevent a company from implementing its final offer... The law does not prevent a company from requiring a union to make concessions." Another flyer concluded, "Normally during negotiations employees *do not* get any improvements."

Also issued were handbills on the strike threat and loss of jobs, and letters on wage, benefit, and work rule improvements, which the company granted to workers during the campaign in an apparent effort to keep them from voting for the union. One handbill implied that the union is composed of crooks, and a letter suggested a possible blacklist of union workers at other Laughlin hotels and casinos:

Many employees have asked, will we be able to go to work for other Laughlin hotels if the

United Steel Workers win the election?...We do know that the other hotel-casinos now in Laughlin do not have a union contract and are sure that the other hotel-casinos want to operate on a nonunion basis, and if you become a union member, the union could fine you for working at a nonunion company. We would never "black-ball" anyone, but we can't speak for the other hotel-casinos in Laughlin. Before you vote "Yes", you might want to check with other hotel-casinos here about your job opportunities if you come from a "union hotel." ...why risk your future job opportunities by voting in a union?

As the election approached, Human Resources Director John Kosinski adopted a caustic tone. In a memo to all employees dated July 3 (three days before the vote), Kosinski declared: "The Steelworkers are getting desperate. The union's latest move is a phoney 'guarantee' that is completely worthless....The only guarantee the union can make about negotiations is to take you out on strike if it can't get the company to agree on its proposals." The memo went on to ridicule the USWA assurance that it would not call a strike unless the workers voted for one. Kosinski referred to this as "a joke" and "a flat lie," and he claimed that "votes in the United Steelworkers are not by secret ballot so the union could 'rig' the vote."

The Flamingo Hilton's outrageous propaganda and disdain for the rights of workers to independent representation reflect the paranoid response that a showing of strong interest in unionization can prompt. The dramatic deterioration in union support, from 75 percent when the petition was filed to 45 percent when the election was held, demonstrates the effectiveness of this propaganda. The USWA filed unfair labor practice charges, and hearings began eleven months after the election on June 9, 1994. The Flamingo Hilton's conduct was so excessive that the NLRB is seeking a bargaining order in federal court.

Whatever the results of the legal proceedings, the Flamingo Hilton experience demonstrates the cynicism that often underlies nonunion dispute resolution systems. The complaint resolution policy is best understood as an anti-union tool and one component of the Flamingo Hilton's systematic assault on its employees' efforts to organize. Employer-dominated dispute resolution systems offer little promise to workers who seek a legitimate voice in the workplace. ■

ELECTRONIC BANKING SYSTEM ■ Amalgamated Clothing and Textile Workers Union (ACTWU)

HAGERSTOWN, MARYLAND

EMPLOYEE: Linda Cave

DEPARTMENT: Cage

"In the beginning of the union campaign I was afraid to let my coworkers and management know how I felt about the union—

I raised my hand to disagree with Mark on the benefits of a union. Pat Weaver helped me out. Mark was rude to her and tried to make us quiet.

This is the way all of the meetings were conducted. He made people feel intimidated.

The so-called 'pro-union' employees couldn't even walk to the restroom without being followed. Anytime Joanne Weicht left for the bathroom Merry Hull would have some one follow her, usually Bonnie Teays."

This quote from Linda Cave who worked in "the Cage" at EBS reflects the role of intimidation in the employer's campaign against an independent voice for workers. Even the grievance committee set up as an alternative to a union was introduced with a heavy hand—voting on department representatives was mandatory.

ELECTRONIC BANKING SYSTEM (EBS) is a service sector business that audits and processes donations made to its clients. Donor information is recorded and mailing lists kept up-to-date. Its clients are charitable and other non-profit organizations such as the Democratic National Committee, the National Organization for Women, Greenpeace, Catholic Relief, and various veterans organizations.

Nearly all of the 137 workers are women. They earn minimum wage or a little above, and many are part-timers working without health insurance or other benefits. EBS also utilizes homeworkers and temporaries. Officers and supervisors routinely bang their fists on desktops and shout at workers. The building is kept so cold in winter that workers perform data-processing tasks wearing gloves. The windowless work area is crowded with rows of desks and terminals.

The ACTWU organizing campaign began in November 1992. Over the course of a weekend, a majority of EBS workers signed union cards. Sunday was the day of their first union meeting, which was held at a United Automobile Workers local union hall not far from the business site. Over a fifth of the work force turned out that afternoon. Before, during, and after the meeting, owner Ron Edens and EBS supervisors sat in parked cars along the street outside the union hall. Two of Edens's personal secretaries attended the gathering with notepads in hand and recorded the proceedings.

The next day Edens held a two-and-a-half-hour captive audience meeting. He cautioned the workers to stay away from the union and told them that his secretaries had reported back all that was said at the union meeting. He threatened to close EBS if a union "came in." He then announced a new grievance committee structure and secret ballot elections were held immediately. Supervisors distributed makeshift paper ballots to workers, who were instructed to elect two representatives for their department to serve on the grievance committee. All workers were required to vote. The ballots were collected and tallied by supervisors and the winning names announced. Newly elected worker representatives solicited written complaints and suggestions from coworkers. Edens then met with the representatives individually in his office to negotiate solutions to departmental grievances.

Over the next few weeks a variety of changes were introduced to discourage support for the union. A “no talking, no fraternizing” rule was put into effect but only enforced against union supporters. Supervisors were stationed in the break room, parking lot, and building entrances at shift changes and break times. On many occasions, Ryan Edens (son of the owner) stood at the front entrance and cursed ACTWU supporters as they entered the building after morning leafletting.

Joanne Weicht, rank-and-file leader of the organizing campaign, describes what happened to her on December 10, 1992:

I was standing in the parking lot of EBS at approximately 6:00 a.m. handing out union leaflets. Ron Edens, Jr. (a supervisor and also son of the owner) came out of the building and watched. My coworkers carrying leaflets had to walk by him to enter the building. He made me feel very intimidated.... When I left work that afternoon there was an envelope on my car with my name typed on it. Inside the envelope were shredded leaflets. I felt that someone was trying to scare me to keep me from working for the union.

Mark McQueen, the company’s attorney, personally conducted captive audience meetings and one-on-one sessions. He told workers that most of his clients were unions, and that his specialty was negotiating union contracts with employers. He then said that this experience had led him to the conclusion that collective bargaining can take forever without positive results.

Union supporters were not allowed to leave their workstations during the campaign. Supervisors escorted them to and from bathrooms. Surveillance cameras were installed by the time clock, in the hallways, and by the worker bathrooms. A new “one-at-a-time” rule at the copy machine was put in effect. The workstations of union activists were moved to face walls.

While ACTWU supporters were held on tight leashes, antiunion employees were permitted to talk freely against the union on company time. During the week of January 4, Human Resource Director Cathy Hart hand-delivered letters to antiunion and undecided

workers, inviting them to a series of small group meetings at nearby Oliver’s Pub. The meetings were held each night that week and were conducted by Ron Edens, Mark McQueen, Ryan Edens, and Cathy Hart. The purpose was to recruit members for “Employees Against the Union.”

The tone of the campaign changed dramatically, as the recruits passed out their antiunion leaflets and “vote no” buttons on their coworkers’ desks. They clocked in late from morning antiunion pep rallies and roamed freely from department to department campaigning against the union. The final captive audience meeting was held on January 14, the day before the election. At the meeting Ron Edens promised workers a new incentive system that was “guaranteed” to result in bonuses as high as \$90 a week.

ACTWU lost the vote 65 to 33 and filed objections a week later. Subsequently, small groups of four or five workers at a time were called into meetings by EBS Vice President David Rentschler. He asked them to sign some documents. He said that they did not have to sign, but that their loyalty would be appreciated. The payroll clerk passed out a petition and form letters addressed to the NLRB. The documents stated that Ron Edens did not threaten to close EBS if the workers unionized, did not conduct surveillance or use any intimidation tactics during the course of the campaign, and conducted himself appropriately and fairly. The payroll clerk witnessed each signature and verified it on the spot by adding her signature.

One month after the union election more than half of the union activists were gone from EBS. Union supporters received blemished evaluations and were denied annual wage increases. Several were accused of theft. Joanne Weicht was fired in August 1993. ACTWU added several unfair labor practice (ULP) charges to its election challenge. A hearing was finally held on February 22, 1994, thirteen months after the vote. A settlement agreement was eventually reached with EBS in April.

The settlement called for EBS to post a notice agreeing not to interrogate employees about their union activities, not to monitor worker attendance at union meetings, not to pressure workers to sign statements in support of the company, and not to threaten to close

the company in the event of a union victory. In addition EBS agreed not to create an employer-controlled grievance system or to solicit grievances as an alternative to unionization. They were ordered to offer Joanne Weicht reinstatement with back pay.

In light of the numerous violations of the law, a rerun election was scheduled for June 3, 1994. Prior to the

election Joanne Weicht was reinstated and *positioned directly in front of a surveillance camera*. With no effective penalties against EBS, the seventeen months that had elapsed since the first vote, and the departure of many union supporters in the interim, the outcome of the second election was never in doubt. The union was defeated 53 to 23. ■

FORM NLRB-4724
(10-79)

NOTICE TO EMPLOYEES



POSTED PURSUANT TO A SETTLEMENT AGREEMENT

APPROVED BY A REGIONAL DIRECTOR OF THE

NATIONAL LABOR RELATIONS BOARD AN AGENCY OF THE UNITED STATES GOVERNMENT



Section 7 of the National Labor Relations Act gives all employees the following rights:

To engage in self organization;
To form, join or assist unions;
To bargain collectively through a representative of their own choice;
To act together for collective bargaining or other mutual aid or protection;
To refrain from any and all such activities.

WE WILL NOT engage in surveillance of our employees attending meetings with AMALGAMATED CLOTHING AND TEXTILE WORKERS UNION, BALTIMORE REGIONAL AMALGAMATED CLOTHING AND TEXTILE JOINT BOARD, AFL-CIO, or any other labor organization.

WE WILL NOT interrogate our employees about their Union activities and the activities of other employees on behalf of AMALGAMATED CLOTHING AND TEXTILE WORKERS UNION, BALTIMORE REGIONAL AMALGAMATED CLOTHING AND TEXTILE JOINT BOARD, AFL-CIO, or any other labor organization.

WE WILL NOT threaten our employees that we will close and/or move the Hagerstown plant if they support AMALGAMATED CLOTHING AND TEXTILE WORKERS UNION, BALTIMORE REGIONAL AMALGAMATED CLOTHING AND TEXTILE JOINT BOARD, AFL-CIO, or any other labor organization.

WE WILL NOT threaten you that we will never bargain with a union.

WE WILL NOT, by soliciting your complaints and grievances, promise you increased benefits and improved terms and conditions of employment, in order to restrain or coerce you in the exercise of the rights guaranteed by Section 7 of the National Labor Relations Act.

WE WILL NOT promise you that we will institute a plant-wide incentive plan if you refrain from supporting AMALGAMATED CLOTHING AND TEXTILE WORKERS UNION, BALTIMORE REGIONAL AMALGAMATED CLOTHING AND TEXTILE JOINT BOARD, AFL-CIO, or any other labor organization.

WE WILL NOT create an impression that your union activities are under surveillance by stating, in response to your complaints about our compilation of lists showing employees' Union sympathies, that the Union was doing the same thing and that we have to do what we have to do, nor will we inform you that we know who is for or against the Union, or who is pretending to be against the Union.

WE WILL NOT threaten you with a reduction in your pay because of your supposed pro-Union sympathies or other connection with AMALGAMATED CLOTHING AND TEXTILE WORKERS UNION, BALTIMORE REGIONAL AMALGAMATED CLOTHING AND TEXTILE JOINT BOARD, AFL-CIO, or any other labor organization.

WE WILL NOT coerce you into wearing or receiving from us anti-union buttons.

WE WILL NOT interfere with our employees' rights under the National Labor Relations Act by causing a supervisor or agent of the Company to act as an observer on our behalf at a Board-conducted election.

WE WILL NOT verbally criticize our employees by telling them they are not team players because they allegedly favored AMALGAMATED CLOTHING AND TEXTILE WORKERS UNION, BALTIMORE REGIONAL AMALGAMATED CLOTHING AND TEXTILE JOINT BOARD, AFL-CIO, or any other labor organization.

WE WILL NOT interrogate our employees by asking them to execute statements and affidavits in support of the Company's position in connection with unfair labor practice charges and objections to an election that are pending against us in the Fifth Region of the National Labor Relations Board.

WE WILL NOT selectively and disparately enforce our rules against solicitation, distribution, talking, and unnecessary movement by prohibiting or discouraging union solicitations and distributions while permitting nonunion solicitations and distributions, or by otherwise applying those rules against employees who formed, joined, or assisted AMALGAMATED CLOTHING AND TEXTILE WORKERS UNION, BALTIMORE REGIONAL AMALGAMATED CLOTHING AND TEXTILE JOINT BOARD, AFL-CIO, or any other labor organization, on the basis of such affiliation.

WE WILL NOT direct our employees to elect representatives to form a committee to bargain with us concerning the wages, hours, and/or working conditions of our employees, in order to dominate and/or interfere with the formation of such a committee or any other labor organization.

WE WILL NOT terminate employees because they join and assist AMALGAMATED CLOTHING AND TEXTILE WORKERS UNION, BALTIMORE REGIONAL AMALGAMATED CLOTHING AND TEXTILE JOINT BOARD, AFL-CIO, or any other labor organization, or because they engaged in concerted activities, or to discourage them from engaging in those activities.

WE WILL NOT assign employees more onerous and less profitable work because they assisted AMALGAMATED CLOTHING AND TEXTILE WORKERS UNION, BALTIMORE REGIONAL AMALGAMATED CLOTHING AND TEXTILE JOINT BOARD, AFL-CIO, or any other labor organization, or because they engaged in concerted activities, or to discourage them from engaging in those activities.

WE WILL offer JOANNE M. WEICHT immediate and full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed and WE WILL make her whole for any loss of earnings and other benefits resulting from her discharge, plus interest, in accordance with the Settlement Agreement.

WE WILL remove from our files any reference to the discharge of JOANNE M. WEICHT and notify her in writing that this has been done and that the discharge will not be used against her in any way.

WE WILL assign work to LAURA DANNER in a nondiscriminatory fashion and we will not assign her an unfair share of difficult tasks due to her activities on behalf of AMALGAMATED CLOTHING AND TEXTILE WORKERS UNION, BALTIMORE REGIONAL AMALGAMATED CLOTHING AND TEXTILE JOINT BOARD, AFL-CIO, or any other labor organization.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

ELECTRONIC BANKING SYSTEM

(Employee)

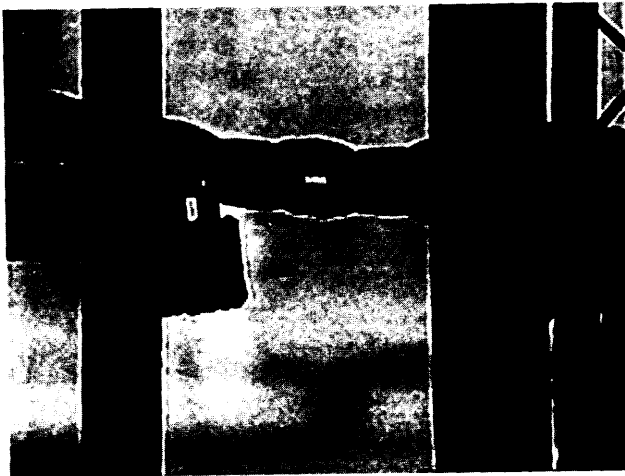
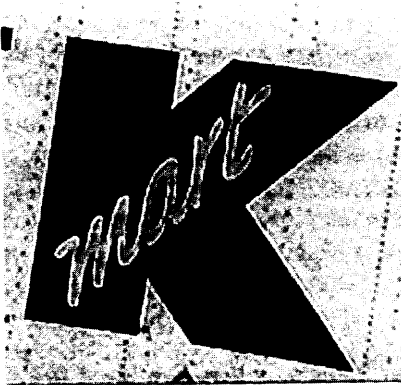
Dated _____ By _____
(Representative) (Title)

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

EBS agreed to post this NLRB notice admitting to multiple violations of labor law. Although nominally a form of punishment, such postings also remind workers of how far a company will go to resist workers' efforts at self-organization.

KMART DISTRIBUTION CENTER ■ International Brotherhood of Teamsters (IBT)

NEWNAN, GEORGIA



A video circulated by Kmart included this image accompanied by a warning: "It makes no sense to put what we have now at risk through Teamster negotiations. A Teamster promise is not a guarantee.... Without a union we have maintained steady employment over the years.... The Teamsters didn't create our jobs and they won't help preserve them." The implied threat of job loss and the locked plant gate are the flip side of employee involvement in Kmart's campaign to resist its employees' pursuit of independent representation.

THE 550 WORKERS at the Kmart Distribution Center began organizing with the assistance of the Teamsters Local 528 during the summer of 1993. The campaign went public in early August, and Kmart was prepared to respond immediately. A year earlier the company had retained the services of Ogletree and Deaking, a well-known union-busting law firm. The union filed a petition on September 8, with signatures from 60 percent of the workers in the unit. The employer challenged the unit makeup and the election was delayed until late December. During the four-and-one-half months between the public start of the campaign and the NLRB vote, Kmart engaged in a variety of actions designed to crush union support.

In order to appreciate the breadth of Kmart's response, it is important to understand the basics of its human resource management system. Full-time permanent employees at the distribution center are referred to as "associates." Part-time and temporary workers are paid about half of the associate wage rate and are hired through Olsten Services, an agency with an office on site. Openings for associates are often filled by upgrading the status of part-time or temporary employees. Front-line supervisory responsibility is assigned to "group leaders."

Just *after* the organizing campaign began, Kmart created two committees, one named the Associate Relations Committee and the other referred to as either the Employee Involvement Committee or the Verbals Committee. Associates were urged to volunteer for these committees, and company-wide sessions were held to promote them and to discuss employee concerns. Union activists were barred from the meetings and from serving on the committees. Based on input through this process, production standards were eliminated and written warnings were removed from employee files and shredded. In addition, worker grievances were solicited and addressed.

While promoting worker input through the Associate Relations and Employee Involvement Committees, Kmart also implemented a standard antiunion program. A "vote no" committee was established, and favors were promised to some union supporters who agreed to switch sides and wear "vote no" t-shirts. Five antiunion videos

were circulated among the workers to take home and view. The videos attacked the IBT and threatened plant closure, layoffs, and loss of wages. One of the videos took excerpts from NLRB decisions and pieced them together to create a negative image of unions and collective bargaining, concluding that “the NLRB has confirmed this message to anyone considering a union: ‘collective bargaining is potentially hazardous for employees, and as a result of negotiations employees might possibly wind up with less after unionization than before.’”

Antiunion leaflets were also distributed, and meetings were held on company time from which open union supporters were barred. One leaflet warned workers that they would be permanently replaced when the IBT took them out on strike. The captive audience meetings repeated the message of the videos with threats of loss of jobs, wages, and benefits. Kmart managers insisted that “collective bargaining starts from scratch” and presented data to show that workers would lose wages and benefits if they voted for the union. Group leaders monitored union activity and singled out workers for one-on-one meetings to discuss Kmart’s position. Department managers told workers that Kmart would never sign a contract even if the IBT won the election. Kmart hired a detective agency, recruited workers to “spy on the union,” and took photos and videos of workers engaged in union activity.

In addition, specific attacks were directed at leading union supporters. Three workers were threatened with discharge for their union activity. Matthew Bailey, a member of the organizing committee, was arbitrarily disciplined and constantly monitored by group leaders and higher level management. For example, Plant Manager Clint White berated him for half an hour in front of other workers for giving testimony at an NLRB unit determination hearing. When coworkers Randy Crawford and Carl Payton approached department manager Gene Johnson to ask him to stop harassing Bailey, Johnson replied, “Matthew Bailey is a stupid black mother fucker and you all are like sheep and you will follow him right out of the gate.”

Later, Bailey brought a UPS envelope with union flyers in it from home and handed out the flyers as workers arrived. He left the envelope on a shelf in the employee

break area so that he could retrieve it at the end of his shift and hand out the remaining flyers as second shift workers arrived. When Bailey returned to the break room the envelope was gone. By the end of the day copies of the UPS envelope were posted throughout the workplace, with a red arrow to Bailey’s name and the return address and the message: “The Teamsters say this is your union—why is this mail coming from Washington, D.C., to this individual?” Personnel Manager Ken Brockman refused to return the envelope or its contents to Bailey and told him that anything found on Kmart property belonged to Kmart.

On another occasion Bailey was accused of theft from the company store, taken to Brockman’s office, and grilled for half an hour about it even though he produced a receipt. After explaining that he was off the clock and had done nothing wrong, Bailey left. The next day he was given a “notice of correction” for insubordination because he left without permission—three notices get you fired. On two occasions Bailey received verbal warnings, one after being accused of harassment by an outspoken member of the “vote no” committee, another when a plant guard reported him for “using obscene language against another associate.” As Bailey later reported in a signed statement for the NLRB, “The harassment I have been subjected to by management is continuous and ongoing. Anyone who knows me knows that I do not use profanity—ever.”

The union lost the December 21, 1993 vote 301 against and 229 in favor. A week later the IBT filed charges, specifying twenty-one unfair labor practice violations. The case is pending, but the best the union can hope for is a rerun election in an environment already poisoned by Kmart’s brutal antiunion campaign. The treatment of Matthew Bailey and the other union advocates betrays the true motive behind Kmart’s associates program and employee involvement committees: workers were offered a “voice” only as part of a long-term strategy to deny them effective independent representation. ■

BARGAINING TO EVADE A FIRST CONTRACT

As several cases we have already discussed make clear, winning a representation election does not necessarily secure union protection for workers. Some employers simply refuse to bargain, some implement changes unilaterally while simultaneously “negotiating” with the union, while others engage in traditional bad-faith bargaining (such as withdrawing agreement on bargained improvements).

The most difficult situations faced by workers in first-contract negotiations occur when the employer has decided in advance to avoid reaching a settlement. Under the NLRB’s curious distinction between “hard bargaining” (acceptable) and “surface bargaining” (an unfair labor practice), employers need not compromise but merely must be willing to meet with the union to discuss differences. Some negotiators use hard bargaining simply to frustrate the process. In other cases employers use the “hard bargaining” approach to stall for time while supporting a decertification campaign.

Even if the union succeeds in securing a favorable ULP decision on charges of bad-faith bargaining, refusal to bargain, or surface bargaining, the penalty has no effect. The NLRB will require the employer to post a cease and desist order and to resume negotiations. In most cases, a willingness to negotiate once a month is sufficient to satisfy the NLRB. In essence, employers can avoid agreement indefinitely so long as they are willing to meet periodically with the union.

The three cases below all involve experienced anti-union attorneys. We encountered the same attorneys utilizing their expertise at nonproductive negotiations in

different parts of the country in cases involving different unions. These union-busting specialists challenge the limits of the law on behalf of employers unwilling to bargain seriously with the representative selected by their employees.

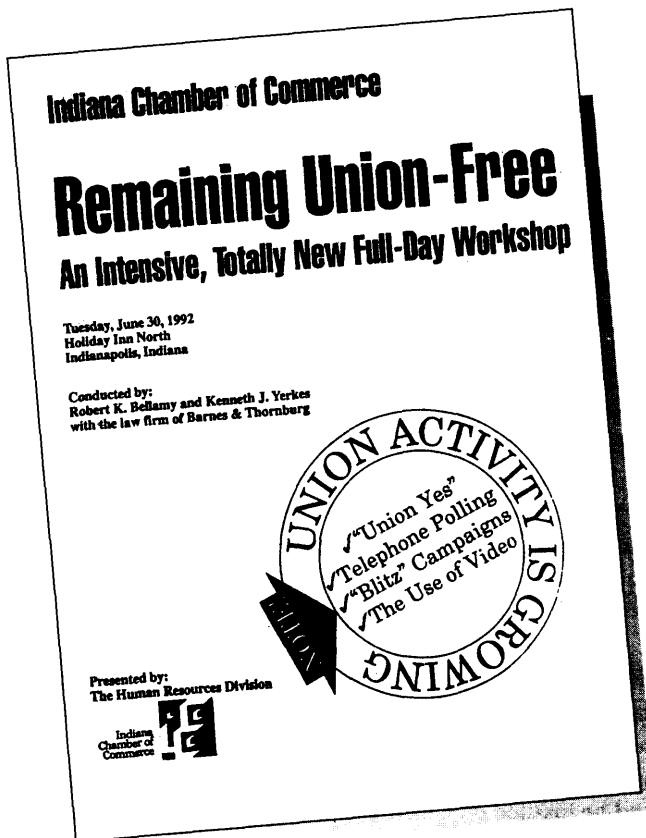
DAWN FROZEN FOODS After delaying the start of negotiations for several months and then allowing modest progress, this company’s attorney took the offensive. He refused to consider dues checkoff, union security, or plant visitation rights. When the union rejected the company’s “final offer,” he coordinated a standard hard-ball union-busting campaign, which ended in decertification.

BETHEA BAPTIST HOME In a case with undertones of race and sex discrimination, this company hired an attorney to represent it at negotiations. He refused to consider a “just cause” provision for discipline or discharge, and he insisted on a clause allowing hidden surveillance to detect theft by employees. A ULP decision that this was surface bargaining did little to change the company’s position, and there is still no contract five years after certification.

ATHOL CORPORATION A third attorney specializing in surface bargaining represented this company, and the theme was the same—no just cause provision, no grievance arbitration, wage increases based only on “merit.” After three years the workers staged a one-day strike, shocking the employer, who relented and negotiated a contract. ■

Dawn Frozen Foods ■ Bakery, Confectionery and Tobacco Workers (BCTW)

CROWN POINT, INDIANA



The lawyer who negotiated for Dawn Frozen Foods conducted this union-free seminar one week before the union at Dawn was decertified.

THE WORKERS at Dawn Frozen Foods in Crown Point, Indiana, decided to form a union early in 1991. They turned to the BCTW for assistance, and International Representative Jeanne Graham was assigned to the campaign. The BCTW won the March 28, 1991 election by a vote of 56 to 41. The workers selected a bargaining team, and Graham stayed on to assist with negotiations.

The company was represented at the bargaining table by attorney Robert Bellamy of the firm Barnes and Thornburg. The first session was held on June 27. As Graham recalls, "Bellamy advised that Dawn had no problem working with our union and proceeded to explain how he was involved in negotiations with two other unions which were soon to be over and he asked if we would please be patient. Although he could only meet once a month now, he said, later large blocks of time would be available. This should have been my first warning. I would never let the company get by with that again."

Negotiations were held July 17, August 15, August 22, September 9, October 10, and November 17. By this time it was obvious that the company was stalling, with no movement on even simple issues like a union bulletin board. Bellamy would agree verbally to an issue at one meeting, then say that the union misunderstood him at the next. The company's plan to avoid reaching an agreement became clear early in 1992. In the words of Jeanne Graham, "In February negotiations Bellamy informed me I was not getting an 'old '60s Bakers' contract,' but a contract which reflected the 'realities of the '90s.' Bellamy zeroed in on dues checkoff, union security, and plant visitation rights as 'old' clauses. It became clear they intended to hang us up on union security, assuming we wouldn't sign a contract without it."

Meanwhile, whenever the union would raise an issue at the table about working conditions, the company would refuse to discuss it and then unilaterally implement changes in the plant. This practice allowed the company to demonstrate to workers that conditions could improve without a union contract. There was even an across-the-board \$.75 per hour wage increase at Christmas, which the union agreed to only to see the company take credit.

Urged on by supervisors, a group of antiunion employees began to circulate a decertification petition in the spring. On June 10, 1992, the group filed for decertification and a vote was set for July 8.

Meanwhile at negotiations the company made what it labeled its final offer on June 21. At this stage the BCTW was not worried about the decertification vote because an internal organizing campaign was in place with seventy-plus workers wearing union hats on the job every day. A federal mediator suggested that the union have the workers vote on the final offer, noting that the company had told him that they could count hats and knew that they were going to lose the decertification election. The members voted down the final offer on June 28 and the union requested a new bargaining session. Little did they know that they were playing right into Bellamy's carefully crafted union-busting strategy.

Coincidentally, Robert Bellamy revealed his true colors on June 30 when he conducted an all-day seminar in Indianapolis with an associate from Barnes and Thornburg. Sponsored by the Indiana Chamber of Commerce, the seminar was titled "Remaining Union Free." In the final week before the decertification vote, Bellamy practiced what he preached, helping the company run an intense antiunion campaign. All of the standard ingredients were there: captive audience meetings, supervisors holding one-on-ones, the owner promising to give the workers everything the union had negotiated without union dues, and slides of the plant with a closed sign on the door.

The linchpin came on July 7, the day before the vote. Bellamy sent a letter to Graham via certified mail responding to her request for a bargaining session to discuss the company's final offer which had been voted down:

That final offer remains final....

—What final means is that Dawn is prepared to take a strike if its final offer is not acceptable.

—Final means you have gotten all there is to get—there is not one penny more—period.

—If a strike does occur, Crown Point will of course exercise its right to continue operations and hire replacements.

—If you do not believe me when I say that something is FINAL, go ask the UAW in Cambellsville, Kentucky. After I gave a final offer, they went on strike over an open shop clause...permanent replacements were hired, the union is now gone....
FINAL means FINAL.

The letter was really not intended for Graham but for the workers at Dawn. Supervisors hand-delivered copies on the shop floor to every employee. The next day the BCTW lost the decertification vote 51 to 48.

Jeanne Graham candidly criticizes the union's bargaining strategy and her own role: "In retrospect, I would have never allowed the company to begin negotiations by meeting once a month, allowing them the time to improve conditions, stack the plant with temps, and have the time for large turnover of original voters. I would have dismissed an obviously biased Federal Mediator....I would never allow the final offer to come before the decert vote. And, although I'm sure we had the votes until the last week, I would have accepted the contract if I had to do it over again."

But the problem was not Jeanne Graham or the BCTW's strategy. Workers should not be in a position where the choice is either accept only what the employer is willing to offer or sacrifice union representation. The company stalled negotiations and engaged in surface bargaining, knowing full well that the NLRB would not interfere. Then, with the assistance of a skilled union buster the company unleashed an efficient and intense antiunion campaign based on threats and intimidation. The workers at Dawn lost union representation because the law did not protect their rights. ■

BETHEA BAPTIST HOME ■

United Food and Commercial Workers (UFCW)

DARLINGTON, SOUTH CAROLINA

THE UFCW initiated an organizing campaign at Bethea Baptist Home in June 1989 in response to a request from the workers there. Most of them African-American women, the workers initiated the contact because of concern for their treatment at the home, including low wages and a pattern of race and sex discrimination. As rank-and-file leader Carol Bishop told a newspaper reporter at the time, "We are organizing a union for fair treatment, respect on the job, and better working conditions."

Pay for the nursing assistants, dietary aides, custodians, groundskeepers, and laundry employees averaged slightly above minimum wage. However, male employees were paid approximately \$1 per hour more than women workers performing the same tasks. The most blatant indications of race discrimination were a segregated dining area for black employees and segregated Christmas parties. A white employee who sat with blacks at lunch had been fired, as had a director of nursing who questioned the segregation.

The union secured authorization cards from over 70 percent of the workers in the 70-member unit and filed for an election on June 20, 1989. An election was held August 3 and the union won 50 to 14. The nursing home, which is owned by the South Carolina Baptist Convention, responded to the union's election win by hiring renowned antiunion attorney Julian Gignilliat to negotiate.

At the first bargaining session Gignilliat presented the union with a copy of the employer's personnel policies (as the union had requested), but he admitted that not all policies were included in the documents and that employees had not been informed of all policies. He actually stated, "We gave you our policies, but we didn't say we followed them." In reference to job descriptions provided at the same session, he said they "may or may not be about real jobs." When asked how employees were supposed to know their job assignments, his response was, "They get it by osmosis."

This antagonistic attitude was reflected even more clearly in the positions taken by Gignilliat on behalf of the employer. Bethea's proposal included a management rights clause that affirmed "the right to terminate [a worker's] employment at any time, with or without no-



In spite of court victories and financial settlements for Bethea workers on race and sex discrimination and wage and hour complaints, the employer has denied workers the right to independent representation on the job. Its lawyers' surface bargaining strategy has allowed Bethea to avoid a collective bargaining agreement for five years since this celebration.

tice and with or without reason." Gignilliat refused to consider a union proposal that discipline and discharge must be for "just cause." Also, the employer would accept only a two-step grievance procedure with no arbitration.

Other rigid positions included no dues checkoff, no union security of any type, no visitation rights for union representatives, and no provision for access to nursing home bulletin boards to post notices of union meetings. The home also insisted on language guaranteeing unlimited flexibility to use "leased employees and non-bargaining unit employees to perform bargaining unit work." Perhaps most insulting, the employer insisted on an agreement that would allow the installation of hidden cameras to monitor employees and hidden dyes and powders to detect employee theft.

While Gignilliat was protecting management's unilateral authority at the bargaining table, supervisors were implementing a campaign against union supporters in the workplace. Vocal union advocates were subjected to harassment, discriminatory job assignments, reduction to part-time status, suspension, and discharge. In addition to its campaign against individual employees, the company penalized all members of the unit by withholding two annual raises due in January 1990 and January 1991.

The union filed multiple unfair labor practice (ULP) charges beginning on August 25, 1989, and a series of complaints were issued. The NLRB practice of postponing hearings in order to consolidate complaints resulted in numerous delays, culminating in a sixth consolidated complaint on July 31, 1991, amended once more on September 6, 1991. An administrative law judge (ALJ) held hearings periodically from September 23 through December 10, 1991. The ALJ decision was issued June 1, 1992, upholding the union on all significant charges including discriminatory treatment of union members and surface bargaining. The company appealed.

The NLRB issued its decision January 22, 1993, concurring with the ALJ. The order required the employer to reinstate and/or compensate those union members who suffered discriminatory treatment, to grant retroactive annual wage increases due January 1990 and January 1991, and to bargain with the union. The union's

certification was extended one year from the resumption of bargaining.

Negotiations reconvened in March 1993. The proposals for hidden cameras and dyes were dropped. Otherwise, the employer's position did not change on key issues including employment at will, just cause, and grievance arbitration. The employer also insisted that future pay raises be based only on merit. Although certification expired in March 1994, support for the union remained strong, and negotiations were continuing as of July 1994.

Eileen Hanson, the UFCW organizer who has assisted the Bethea workers throughout the ordeal, questions the motives of the owners of the nursing home:

It is cruelly ironic that a religious organization would treat its employees in such a hypocritical manner. The South Carolina Baptist Convention should remember the scriptures, "My little children, let us not love in word, neither in tongue, but in deed and truth." ... These workers have expressed their right to bargain collectively, but this so-called religious organization continues trying to evade its moral, legal, and ethical responsibilities.... The meek may inherit the earth, but they're not going to do it by working at Bethea Baptist Home.

Although collective bargaining and the NLRB process have done little to improve conditions for the African-American employees at Bethea Baptist Home, litigation on other fronts has been more successful. An out-of-court settlement was reached in a sex and race discrimination suit ending segregated dining and parties and compensating forty-five workers for approximately \$100,000 in back pay. In addition the union filed a wage and hours complaint because kitchen workers and nursing assistants were required to eat meals at their workstations and be available for duty but were not being paid. A settlement agreement in this case resulted in \$82,000 in back pay for thirty-one employees. ■

ATHOL CORPORATION ■

Glass Molders, Pottery, Plastics and Allied Workers (GMP)

BUTNER, NORTH CAROLINA

ATHOL CORPORATION manufactures vinyl cloth for use mainly in autos, pleasure craft, and school buses. The workers at Athol contacted the Glass Molders, Plastics and Pottery Workers (GMP) in 1989 about possible union representation. The GMP quickly obtained signatures from 65 percent of the 250 workers. By the time an election was held on October 12, 1989, Athol had cut the workforce to 170. In spite of the uncertainty caused by the loss of 80 jobs, the GMP held on to win the election by four votes.

Negotiations began February 9, 1990. The company was represented at the table by Robert Valois of the firm Maupin, Taylor, Ellis and Adams. This law firm is known for its antiunion practices and Valois's own specialty is advising employers how to avoid final collective bargaining agreements. His performance at Athol was consistent with his reputation.

Under Valois's expert guidance Athol adopted an inflexible and regressive bargaining position. Union proposals for a workable grievance procedure, binding arbitration, wage and benefit increases, and dues checkoff were rejected out of hand. The company refused to provide the GMP with information necessary for bargaining, such as the number of hours worked by employees. Valois would agree to union proposals at negotiations only to withdraw agreement at a later session. For example, the union proposed a drug and alcohol testing program and Valois recommended specific changes that would lead to agreement. The union made the changes and presented the revised proposal at the next meeting but Valois rejected it anyway.

In negotiations over the next three years the company would agree only to proposals that were a matter of law, such as a no-discrimination clause. Athol presented two nonnegotiable packages on June 30 and November 30, 1990. The second proposal was only slightly different from the first and was labeled the company's "final offer." In forty-one bargaining sessions through the end of 1992, Athol refused to budge from this package.

One clause of the final contract proclaimed "the right of the company to hire and discharge employees *for any cause*." Consistent with this, Valois refused to discuss any union proposals for a "just cause" clause. Athol's proposed grievance procedure included as a last step a

"company designee" whose decision would be "final and binding on the employee, the union and the company." The proposal also included an incredibly broad management rights clause, and a provision that reserved the company's right to discontinue at any time any program or policy specified in the agreement. The final offer also stated that all wage increases would be merit increases, and it explicitly reserved "the right to terminate all pension plans." The coup de grace was an article that gave Athol the right to terminate the contract with six months notice.

While taking a hard-line stance at the negotiating table, the company also implemented antiunion policies in the workplace. The company held captive audience meetings and denounced the union. Athol Executive Vice President Garrod Post told employees that their support for the union was futile and that unions were anachronistic. At another meeting Post announced that Athol would never sign a contract with any union. The company indirectly threatened to move the plant by distributing a notice to employees that all salaried staff would be sent to Spanish classes. This letter raised concerns because there were no Hispanic employees in the plant.

Athol also made unilateral changes without consulting with the union. All employees were required to work over Christmas week in 1990 in a change from past practice. Then, the plant was shut down for a week in early February 1991 and the union was not even informed at a bargaining session three days before the shutdown. Also, a quality circle program was introduced unilaterally.

The GMP filed multiple unfair labor practice charges starting in the summer of 1990. In all cases the NLRB either dismissed the charges or reached a settlement agreement with the employer, often over the union's objections. Although some of the settlements did correct unacceptable company behavior (for example, several union supporters who had been fired were reinstated), most of the ULP charges had to do with the company's refusal to engage in serious bargaining and this did not change. The settlements simply required the company to return to the table to resume negotiations.

Particularly frustrating to the union was the NLRB's unwillingness to issue a complaint on surface bargaining in spite of the company's blatant strategy of avoiding a

collective bargaining agreement. The closest the NLRB came was to issue complaints against Athol in June 1992 for failure to bargain and for changing working conditions without bargaining. In October 1991, in a letter to the union's law firm defending a settlement agreement that simply required the company to return to the bargaining table, the director of the NLRB Office of Appeals conceded that "the evidence in the case on appeal indicates that the employer engaged in bad faith surface bargaining" and explained that the union's certification would be extended to correct for this behavior. However, Athol was never required to admit any violation of the law and was never even tried on surface bargaining charges. Expressing his exasperation with the NLRB's handling of the Athol case, GMP Area Director Frank Trojan complained, "The Winston-Salem Regional Board pays only lip service to charges and appears in the final analysis to be merely a protection for the aspirations of corporate entities."

Athol's legal team took advantage of the NLRB's lack of resolve. In reaction to the June 1992 charges that it had failed to bargain, the company's lawyers responded: "Athol is not obligated to make a concession at the bargaining table. The NLRB's complaint represents an unwarranted intrusion in the collective bargaining process." In addition to denying any obligation to engage in substantive bargaining, Athol also used every opportunity to stall and delay the process through legal appeals. When served with an NLRB complaint, Athol's law firm of Maupin, Taylor, Ellis and Adams filed a "motion for a more definite statement," asking for an explanation of the complaint. By the time this motion was denied, *three months* had elapsed since the original complaint; Athol's lawyers then filed a "request for special permission to appeal" the denial. More delays ensued. Ultimately a hearing was scheduled, but eleven days before the hearing a second union-busting law firm—Ogletree, Deakins, Nash, Smoak and Stewart—petitioned for postponement. It seems that since Robert Valois was chief negotiator for Athol and the complaint dealt with Valois's behavior at the bargaining table, Ogletree had been hired at the eleventh hour to represent Athol at the hearing. This maneuver



A spokesperson for Athol workers explains that their one-day strike is to protest three years of meaningless bargaining and to send the message that workers want a fair contract.

worked, and the NLRB agreed to postpone the hearing indefinitely.

Incredibly, the union was able to retain broad support throughout the period of the bargaining stalemate. During 1991, with the assistance of the Food and Allied Service Trades Department, the workers conducted a letter-writing campaign to customers of Athol, explaining that the company did not treat its employees fairly. Athol responded by harassing members of the local's negotiating team. In 1992 when Athol attempted to prohibit a union bargaining team member from attending negotiations, the local decided to expand membership on the team. Athol then announced that it would allow only three unit employees to participate in negotiating sessions, and it posted a memo designating which members of the local's negotiating committee would be permitted to attend. Athol's obstinacy only strengthened the resolve of members of the local.

Frustrated at the inability of the NLRB to force the company to deal with the union, the workers took it upon themselves to withhold their labor for one day in early March 1993 with nearly 100 percent participation. As union member Susan Dawson explained to a television news reporter covering the strike, "I hope they learn to respect us because we are all people. We are the little people, but without us they won't have a company. So we just want to be heard and treated fair." The company was so stunned by the wildcat strike that no retaliatory action was taken. Athol had maintained at negotiations that the only workers who supported the union were the members of the union bargaining team. Once the strike occurred the company realized that the union was there to stay and began to take negotiations seriously.

A contract was reached on September 27, 1993. Union membership in this right-to-work state stands at 90 percent. Although the GMP ultimately prevailed, the process took four years. Robert Valois's charade of engaging in bargaining with no intention of reaching an agreement successfully manipulated the NLRB process. Athol was allowed to evade a first contract and was forced to reevaluate only because of a tenacious local union, which persisted to beat the odds and outlast the employer. ■

CONCLUSION

The Crisis in Labor Law

We believe that the cases collected by the Industrial Union Department expose the false assumption of many casual observers and policy makers that blatant union busting is practiced only by a relatively small group of extremists in the management community. The underlying position of most employers is hostile to employees' rights to organize and engage in concerted action. Given the widespread animus displayed toward unions and the current state of labor law, employers' abuse of the right to organize is bounded only by the ingenuity of the lawyers and consultants who have made this field of practice their specialty.

We also believe that dramatic change in the law is needed to counteract the management union-busting convention. Based on the cases we have collected, a number of problem areas must be addressed if the right of workers to organize is to be protected.

1. Employers' interference with workers' decisions regarding unionization should be curtailed. Steps should be taken to limit management's ability to intimidate workers with threats, surveillance, and continuous pressure.

2. For employers who openly violate labor laws in order to defeat organizing campaigns, the costs of non-compliance must be increased. Particular attention should be given to proposals that would protect union supporters from discrimination, especially unjust dismissal.

3. Steps should be taken to speed up the NLRB process. Election delays allow management to exploit fears and intimidate supporters of independent representation. One option is to forego an election if a majority of

workers have signed cards authorizing a specific union to serve as their bargaining agent. Delays in certification and the start of bargaining should also be reduced because they deny workers the right to union representation and contract protection.

4. Restrictions should be placed on management consultants and lawyers serving in a consulting capacity during union avoidance campaigns. Penalties also should be considered for consultants and law firms associated with illegal union-busting activities.

5. Steps should be taken to ensure that a decision by workers to unionize cannot be circumvented by employers who refuse to engage in good-faith bargaining. This could be accomplished by requiring arbitration of first contracts if agreement cannot be reached within a specified time after certification.

Specific proposals that address these concerns are spelled out in detail in the IUD report *Workplace Rights: Democracy on the Job*. As summarized there, "The three prerequisites to rebuilding the union organizing process in this country are card majority recognition; removal of employer interference from the certification process and greater union access to employees; and binding arbitration on the first contract."

The proposals offered in *Workplace Rights* would place strict limits on employers' ability to thwart the right of workers to organize and join unions. They would also grant workers a reasonable opportunity to consider independent representation in an atmosphere free of fear and intimidation. Finally, they would ensure that workers through their unions would have the opportunity to achieve contractual protection via meaningful collective bargaining. ■

ADDITIONAL RESOURCES

A companion document which reviews labor law and industrial democracy is available from the Industrial Union Department: *Workplace Rights: Democracy on the Job*.

The cases reviewed in this manual were included in a different form in a collection of 100 cases, titled *The Employer Assault on the Legal Right to Organize*, which was prepared for the Commission on the Future of Worker Management Relations. An earlier version of the report, "Patterned Responses to Union Organizing: Cases Studies of the Union Busting Convention," appears in *Restoring the Promise of American Labor Law*, edited by Sheldon Friedman, Richard W. Hurd, Rudolph A. Oswald and Ronald L. Seeber (ILR Press, Cornell University, Ithaca, N.Y. 1994).

GLOSSARY

The following brief definitions explain how these terms are used in the case studies

Administrative law judge (ALJ) A judicial agent of the National Labor Relations Board.

Bad faith bargaining An action or proposal intended to distort the negotiation process in order to avoid agreement, or a bargaining demeanor which indicates that the party has no intent to reach agreement.

Captive audience meetings Meetings conducted by employers which workers are forced to attend to hear antiunion messages.

Certification Official designation by the National Labor Relations Board that a specific organization has been selected by a majority of employees as their collective bargaining agent.

Certification election An election conducted by the National Labor Relations Board to determine whether a majority of workers support independent representation by a specific union or association.

Decertification A process whereby workers vote to terminate independent representation by a union; the law specifies that decertification proceedings be initiated by workers independent of the employer.

Dues checkoff An agreement by employers to deduct union dues from the paychecks of workers who authorize it and to transfer the dues directly to the union.

Dunlop Commission The Commission on the Future of Worker Management Relations appointed by the Clinton administration to examine laws that govern the workplace.

Good faith bargaining An honest attempt to reach a mutually acceptable agreement.

Hard bargaining Starting with a firm position and refusing to budge from it on anything but minor issues.

National Labor Relations Act (1935) Established right of workers to form organizations independent of employer control; prohibited unfair labor practices by employers which interfere with this right.

National Labor Relations Board (NLRB) The government agency established to enforce the National Labor Relations Act as amended; the Board consists of 5 members, the agency has 33 regional offices.

One-on-ones Meetings between a supervisor and an individual worker during which the supervisor presses the worker to oppose unionization.

Representation election Same as certification election.

Self-organization The process by which workers join together to form their own association or union independent of management.

Surface bargaining Maintaining the facade of negotiations with no intent of reaching a settlement.

Taft-Hartley amendments Amended National Labor Relations Act in 1947 by adding employers' rights to speak against unions; retained workers' rights and unfair labor practices specified in 1935 National Labor Relations Act.

Unfair labor practice (ULP) A practice prohibited under the National Labor Relations Act as an improper interference with workers' rights to independent representation.

Union authorization card (petition) A card (petition) signed by a worker designating a specific union or association as his or her representative for purposes of collective bargaining.

Unit determination hearing A hearing by a representative of the National Labor Relations Board to determine which workers should be allowed to vote in a representation election.

Weingarten rights The right of a worker to independent representation during a disciplinary hearing.